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NO. 52791-0

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

In Re the Detention of G.R.,

Respondent.

APPELLANTS' OPENING BRIEF

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I. INTRODUCTION

G.R. suffers from schizophrenia and has an extensive history of arson and reckless burning charges. He was admitted to Western State Hospital on June 27, 2018 for evaluation for civil commitment after he was found not competent to stand trial on a charge of Arson in the First Degree.

Following a contested hearing, the court commissioner found that G.R. had committed Arson in the First Degree, but failed to check the box on the court order indicating that the acts G.R. committed constitute a violent offense under RCW 9.94A.030, as required by RCW 71.05.280(3)(b). Counsel for the petitioners brought this to the commissioner's attention, but the commissioner declined to correct this error. Petitioners then timely filed a motion for reconsideration that the commissioner denied.

This Court should vacate the finding that Arson in the First Degree does not constitute a violent offense and remand with instructions that the commissioner find that the act G.R. committed constitutes a violent offense under RCW 9.94A.030.

II. ASSIGNMENT OF ERROR

A. The trial court erred by failing to determine that the felony act G.R. was found to have committed (Arson in the First Degree) constituted a violent offense under RCW 9.94A.030.

III. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

A. Whether the trial court erred by failing to adhere to RCW 71.05.280(3)(b) when it found that G.R. committed Arson in the First Degree but failed to determine that this act constituted a violent offense under RCW 9.94A.030. (Assignment of Error A)

IV. STATEMENT OF THE CASE

The case underlying this appeal involves the civil commitment of a patient who came to Western State Hospital following dismissal of criminal charges for arson. Clerks Papers (CP) at 1-16. On November 30, 2017, G.R. was charged in Clallam County with causing a fire which damaged a building, contrary to RCW 9A.48.020(1)(b). CP at 22. The charges against G.R. were dismissed on June 21, 2018, following a finding that G.R. had undergone competency restoration treatment but was found to be unlikely to regain competency. CP at 22–23.

G.R.'s civil commitment hearing took place on July 16, 2018. CP at 23. Following testimony from Forks Police Department Officer Joseph Solberg, the commissioner made a written finding that G.R. "admitted to causing a fire and damaging a dwelling or trailer by placing a coat on the stove and turning it up [to] high, which constitutes the felony/felonies of Arson in the First Degree within the meaning of RCW 71.05." CP at 23. The commissioner also found that, as a result of a mental

disorder, G.R. presents a substantial likelihood of repeating similar acts. CP 23.

The court commissioner prepared the Findings, Conclusion, and Order Committing Respondent for Involuntary Treatment, and, in doing so, failed to check the box indicating that G.R. committed acts constituting a violent offense under RCW 9.94A.030. CP at 18.

Petitioners timely filed a motion for reconsideration on July 26, 2018. CP at 22-25. The commissioner denied the motion for reconsideration on September 13, 2018. CP at 56-57. Petitioners then timely appealed on October 15, 2018. CP at 58-59.

V. ARGUMENT

A. Standard of Review

Questions of law are reviewed de novo. *See City of Spokane v. Cty. of Spokane*, 158 Wn.2d 661, 672, 146 P.3d 893, 898 (2006); *see also In re Schley*, 191 Wn.2d 278, 284, 421 P.3d 951, 955 (2018).

B. The Commissioner's Order Should Be Partially Vacated Because The Commissioner Unlawfully Failed To Find That G.R. Committed A Violent Offense

This Court should partially vacate G.R.'s commitment order and remand with instructions to find that the felony act G.R. committed constitutes a violent offense under RCW 9.94A.030. It should do so because RCW 71.05.280(3)(b) requires the commissioner to make a determination

as to whether the felony act G.R. committed constitutes a violent offense, and the act the commissioner found G.R. committed, Arson in the First Degree, is a violent offense under RCW 9.94A.030 as a matter of law.

RCW 9.94A.030(55) sets forth the felonies which qualify as a "violent offense," and includes Arson in the First Degree. RCW 9.94A.030(55)(vii). RCW 71.05.280(3) provides that a person may be committed for further treatment if the person has been determine to be incompetent, the criminal charges have been dismissed, and as a result of a mental disorder, the person presents a substantial likelihood of repeating similar acts. If the charge underlying the finding of incompetence is for a felony classified as a violent felony under RCW 9.94A.030, the court shall determine whether the acts the person committed constitute a violent felony under RCW 9.94A.030. RCW 71.05.280(3)(b).

In this case, the commissioner found that G.R. had committed acts which constitute Arson in the First Degree. CP at 32. Following the testimony from former Forks Police Department Officer Joseph Solberg, the commissioner made a specific finding that G.R. committed acts which constitutes the felony/felonies of Arson in the First Degree within the meaning of RCW 71.05. CP at 32. Once the commissioner made this finding, the law required that the commissioner determine whether the act G.R. committed constitutes a violent offense under RCW 9.94A.030. *See*

RCW 71.05.280(3)(b) ("For any person subject to commitment under this subsection where the charge underlying the finding of incompetence is for a felony classified as violent under RCW 9.94A.030, the court **shall** determine whether the acts the person committed constitute a violent offense under RCW 9.94A.030") (emphasis added). The violent felony finding is significant because it triggers additional notifications and safety precautions when G.R. is released back into the community. RCW 71.05.425.

As RCW 71.05.280(3)(b) is clear that the commissioner had a duty to make the violent felony determination in this case, the only issue remaining is a question of law: whether Arson in the First Degree is a violent offense under RCW 9.94A.030. The statute at issue is unambiguous and indicates that Arson in the First Degree is defined as a violent offense. RCW 9.94A.030(55)(vii). Despite this, the commissioner failed to find that the acts G.R. committed constitute a violent offense under RCW 9.94A.030.

The commissioner's failure to find that G.R. committed acts constituting a violent offense under RCW 9.94A.030 on the July 16, 2018 commitment order is an error that impacts how G.R. is treated now and in the future. This Court should vacate that part of G.R.'s commitment order and direct the commissioner to revise the Findings, Conclusions, and Order Committing G.R. for Involuntary Treatment to reflect the fact that the

felony charges dismissed against G.R. constituted a violent offense under RCW 9.94A.030.

VI. CONCLUSION

This Court should partially vacate G.R.'s commitment order and remand with instructions to find that the felony act G.R. committed constitutes a violent offense under RCW 9.94A.030. It should do so because RCW 71.05.280(3)(b) requires the commissioner to make a determination as to whether the felony act G.R. committed constitutes a violent offense, and the act the commissioner found G.R. committed, Arson in the First Degree, is a violent offense under RCW 9.94A.030 as a matter of law.

RESPECTFULLY SUBMITTED this 21st day of March, 2019.

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CERTIFICATE OF SERVICE

I, *Malai Malawo*, states and declares as follows:

I am a citizen of the United States of America and over the age of 18 years and I am competent to testify to the matters set forth herein. I certify that on March 21, 2019, I served a true and correct copy of this **APPELLANTS' OPENING BRIEF** and this **CERTIFICATE OF SERVICE** on the following parties to this action, as indicated below:

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I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Dated this 21st day of March 2019, at Tumwater, Washington.

MALAI MALAWO
Legal Assistant

SOCIAL AND HEALTH SERVICES DIVISION, ATTORNEY GENERALS OFFICE

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