

FILED
Court of Appeals
Division II
State of Washington
4/4/2019 12:16 PM

NO. 52791-0-II

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

In re the Detention of G.R.,

STATE OF WASHINGTON,

Appellant,

v.

G. R.,

Respondent,

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

The Honorable Sabrina Ahrens, Commissioner

BRIEF OF RESPONDENT

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A. ISSUE IN RESPONSE

Did the commissioner properly exercise her discretion when declining to check a box indicating the acts respondent committed constitute a violent offense under RCW 9.94A.030?

B. STATEMENT OF THE CASE

The State's brief accurately describes the facts of this case. G.R. was declared incompetent to stand trial on a charge of Arson in the First Degree and, following dismissal of that charge, his treatment providers at Western State Hospital (W.S.H) filed a petition seeking his civil commitment under RCW 71.05. CP 1, 81.

At the commitment hearing on July 16, 2018, the State called two witnesses. Lewis County Deputy Sheriff Joseph Solberg described the fire and G.R.'s confession to starting it, which led to the filing of the criminal charge. RP 9-15. Dr. Brandi Lane, a forensic evaluator at W.S.H., testified to the results of her evaluation of G.R. and his records, shared her diagnoses of his mental illnesses, and expressed her opinion that he met the criteria for commitment. RP 16-23.

At the conclusion of the testimony, Commissioner Sabrina Ahrens found the State had established grounds for the commitment and authorized up to 180 days of intensive inpatient treatment. RP

26. Commissioner Ahrens then filed a consistent written order of commitment, marking a box next to a paragraph indicating:

The Respondent was determined to be incompetent and felony charges were dismissed. Respondent committed the following acts per the testimony of Deputy Joseph Solberg that the defendant admitted to causing a fire and damaging a dwelling or trailer by placing a coat on the stove and turning it up high, which constitute the felony/felonies of Arson in the First Degree within the meaning of RCW 71.05, and as a result of a mental disorder, Respondent presents a substantial likelihood of repeating similar acts.

CP 18. Commissioner Ahrens declined to mark a box immediately beneath this paragraph, which indicates, "The acts Respondent committed constitute a violent offense under RCW 9.94A.030." CP 18.

After reviewing the written order, counsel for the State noted the absence of the additional "violent offense" finding and inquired. Commissioner Ahrens indicated she had declined to make that finding because the State had failed to address or argue the matter during the hearing. CP 28.

The State filed a Motion for Reconsideration, noting that the commitment petition contained an allegation that G.R. committed a violent offense and, by statute, Arson in the First Degree qualifies as a violent offense. CP 22-26. Commissioner Ahrens denied the

motion, finding that the circumstances did not satisfy any proper ground for reconsideration. CP 56-57. The State appealed. CP 58-59.

C. ARGUMENT

THE COMMISSIONER ACTED WITHIN HER DISCRETION IN DECLINING TO CHECK THE BOX FOR A VIOLENT FELONY.

“[Courts] will not consider claims insufficiently argued by the parties.” State v. Elliott, 114 Wn.2d 6, 15, 785 P.2d 440, cert. denied, 498 U.S. 838, 111 S. Ct. 110, 112 L. Ed. 80 (1990). Moreover, there is a policy not to consider matters unless they were timely argued. State v. Wethered, 110 Wn.2d 466, 472, 755 P.2d 797 (1988) (citing In re Rosier, 105 Wn.2d 606, 616, 717 P.2d 1353 (1986)).

Under CR 59, a trial court’s decision on a motion for reconsideration is reviewed for an abuse of discretion. River House Dev. Inc. v. Integrus Architecture, P.S., 167 Wn. App. 221, 231, 272 P.3d 289 (2012). And while a motion for reconsideration can be used in an attempt to rectify an oversight, “[t]he trial court’s discretion extends to refusing to consider an argument raised for the first time on reconsideration absent a good excuse.” Id. (citing Rosenfeld v. U.S. Dept. of Justice, 57 F.3d 803, 811 (9th Cir. 1995)).

As mentioned above, Commissioner Ahrens specifically declined to mark the box indicating that G.R.'s acts constitute a violent offense because the matter had not been addressed at the evidentiary hearing. CP 28. A review of the transcript from that hearing bears this out. While counsel for the State cited RCW 71.05.280, argued its requirements for continued commitment were met, and presented evidence from the two witnesses establishing those requirements, there was no argument that Commissioner Ahrens should enter a finding that G.R.'s acts qualified as a violent offense under RCW 9.94A.030. See RP 6-7 (opening arguments); RP 25-26 (declining opportunity for additional closing arguments).

RCW 71.05.280(3) authorizes commitment for treatment when:

[a] person has been determined to be incompetent and criminal charges have been dismissed pursuant to RCW 10.77.086(4), and has committed acts constituting a felony, and as a result of a mental disorder, presents a substantial likelihood of repeating similar acts.

It was on this basis that Judge Ahrens ordered the commitment. CP 18-21.

The statutory subsection at issue in this appeal, RCW 71.05.280(3)(b), provides:

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.

By its terms, this subsection has two requirements. First, the dismissed charge must be classified as a violent offense under RCW 9.94A.030. Arson in the First Degree – a class A felony -- qualifies. RCW 9.94A.030(55)(a)(i); RCW 9A.48.020(2). Second, the court must then decide whether the person's *actual conduct* would be classified as a violent offense.

Not until its motion for reconsideration did the State expressly and thoroughly argue, under RCW 71.05.280(3)(b), that the acts G.R. committed constituted a violent offense under RCW 9.94A.030. See CP 24-25. And while the State's later effort in this regard is not repugnant to CR 59, "[t]he trial court's discretion extends to refusing to consider an argument raised for the first time on reconsideration absent a good excuse." River House, 167 Wn. App. at 231. Commissioner Ahrens did not violate her discretion when she found "no basis to support reconsideration." Her

decision should be affirmed.

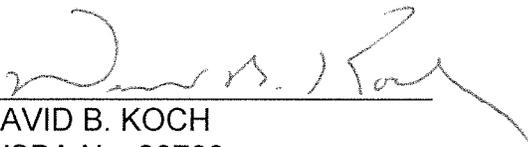
D. CONCLUSION

This Court should affirm denial of the State's motion for reconsideration.

DATED this 4th day of April, 2019.

Respectfully submitted,

NIELSEN, BROMAN & KOCH

A handwritten signature in black ink, appearing to read "David B. Koch", is written over a horizontal line.

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April 04, 2019 - 12:16 PM

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Appellate Court Case Title: Access to case information is limited
Superior Court Case Number: 18-6-00663-5

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