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Division II
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No. 52823-1-II

THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

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**STATE OF WASHINGTON**,

Appellant,

vs.

**HAYDEN VONBARGEN,**

Respondent.

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Appeal from the Superior Court of Washington for Lewis County
Case No. 17-1-00635-21

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# Appellant's Opening Brief

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## TABLE OF CONTENTS

TABLE OF AUTHORITES ..... ii

I. ASSIGNMENTS OF ERROR ..... 1

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR ..... 1

III. STATEMENT OF THE CASE ..... 1

IV. ARGUMENT ..... 5

A. THE TRIAL COURT ERRONEOUSLY REFUSED TO ORDER VONBARGEN TO UNDERGO COMPETENCY RESTORATION IN VIOLATION OF RCW 10.77.086 ..... 5

1. Standard Of Review ..... 5

2. Trial Court Abused Its Discretion When It Determined, Contrary To The Overwhelming Evidence, That The Restoration Process Would Likely Not Be Successful And Therefore, Would Not Order VonBargen To Undergo Competency Restoration ..... 6

3. The Trial Court Disregarded The Mandatory Provisions Of RCW 10.77.086 And Therefore, Incorrectly Interpreted The Plain Meaning Of The Statute ..... 16

B. THE TRIAL COURT ERRED WHEN IT FAILED TO GRANT THE STATE'S MOTION FOR RECONSIDERATION AND DISMISSED VONBARGEN'S CASE WITHOUT PREJUDICE ..... 20

1. Standard Of Review ..... 20

2. The Trial Court Abused Its Discretion When It Denied The State's Motion For Reconsideration And Dismissed The Criminal Action ..... 20

V. CONCLUSION ..... 23

## TABLE OF AUTHORITIES

**Washington Cases**

*State v. C.J.*, 148 Wn.2d 672, 63 P.3d 765 (2003) .....13

*State Coley*, 180 Wn.2d 543, 326 P.3d 702 (2013) .....5, 6

*State v. Perrow,* 156 Wn. App. 322, 231 P.3d 853 (2010) .....20

*State v. Rodriguez*, 146 Wn.2d 260, 45 P.3d 541 (2002).....12

*State v. Sandholm*, 184 Wn.2d 726, 364 P.3d 87 (2015).....17

*State v. Steen*, 155 Wn. App. 243, 228 P.3d 1285 (2010) .....17

*State v. Stenson,* 132 Wn.2d 668, 940 P.2d 1239 (1997).....13

*State v. Stratton*, 130 Wn. App. 760, 124 P.3d 660 (2005) .....17

*West v. Dep't of Licensing*, 182 Wn. App. 500, 331 P.3d 72 (2014) .....20

**Washington Statutes**

RCW 10.77.010(15) ..... 6-7

RCW 10.77.050 .....6, 7

RCW 10.77.060 .....7

RCW 10.77.070 .....7

RCW 10.77.084 .....7, 17, 18

RCW 10.77.086 .....1, 5, 8, 16-19, 21, 22

RCW 10.77.088 .....18

RCW 10.77.090(2) .....7

RCW 71.05 .....22

**Constitutional Provisions**

Washington Constitution, Article I, § 3 .....6

Washington Constitution, Article I, § 22 .....6

U.S. Constitution, Amendment XIV .....6

**Other Rules or Authorities**

DSM-V (5th ed, 2013) .....9

## I. ASSIGNMENTS OF ERROR

1. The trial court erred when in entering findings of fact 1.6, that restoration of VonBargen would likely be unsuccessful.

2. The trial court erred in entering conclusion of law 2.1, that VonBargen is not competent to stand trial.

3. The trial court erred in entering conclusion of law 2.2, that the restoration process will likely not be successful and, as a result, the court will not order the restoration process.

4. The trial court erred when it ruled attempted restoration of VonBargen was not mandatory, per RCW 10.77.086.

5. The trial court erred when it denied the State's motion for reconsideration of the trial court's August 21, 2018 order refusing to order VonBargen submit to competency restoration.

6. The trial court erred when it dismissed the State's case without prejudice.

## II. ISSUES PERTAINING TO ASSIGNMENT OF ERROR

A. Did the trial court abuse its discretion when it found restoration of VonBargen would likely be unsuccessful, and therefore, refused to order VonBargen undergo the restoration process?

B. Does RCW 10.77.086 mandate the trial court order VonBargen to undergo attempted restoration of competency to allow the State to attempt to prosecute VonBargen of the charged felony offenses?

C. Did the trial court abuse its discretion when it denied the State's motion for reconsideration?

D. Did the trial court abuse its discretion when it dismissed VonBargen's case?

## III. STATEMENT OF THE CASE

In April 2017, the Pe Ell Marshall's Office received a report regarding an adult male, later identified as Hayden VonBargen, (DOB: 01/26/1998), having sexually explicit conversations with a minor child. CP 5. It was discovered VonBargen was having online communications with a female, JIW (DOB: 11/02/2004). *Id.*

VonBargen and JIW knew each other from a youth group. *Id.* VonBargen and JIW live in Lewis County, Washington. *Id.* The two communicated online, between April 3, 2017 and April 18, 2017. *Id.*

On April 3, 2017, JIW confirmed she was young. After JIW made this comment, VonBargen turned the conversation towards sexual content. CP 6. JIW and VonBargen discussed oral and penile/vaginal sex, JIW and VonBargen's age difference, VonBargen having sex with someone "6 or 7 years younger than you." *Id.* VonBargen responded, "[m]aybe if they don't tell on me or go to the police or anything…" *Id.*

On April 4, 2017, VonBargen and JIW had a conversation where VonBargen asked JIW if she would perform oral sex on him. *Id.* VonBargen also inquired if they hung out if JIW would have sex with him. *Id.*

On April 6, 2017, VonBargen confirmed with JIW her age, 13 years old, but turning 14 soon. *Id.* JIW and VonBargen then discussed a variety of sexual acts. VonBargen also attempted "to get JIW leave her house and meet him." *Id.*

These conversations continued in the nature as outlined above. *Id.* The conversation escalated on April 14, 2017. *Id.* The conversation began as the other conversations had before, a sexual conversation between VonBargen and JIW. *Id.* VonBargen then told JIW, he had "some dirty picks of me if you want to see them." *Id.* JIW agreed, and VonBargen sent JIW four photographs, three of which were his penis. *Id.* The sexual conversation then continued. *Id.*

The State charged VonBargen with four counts of Communicating with a Minor for Immoral Purposes – Felony. CP 1-4; 13. An Order for Initial Evaluation for Competency was entered on November 30, 2017. RP (11/30/17)[1] 3-5; CP 8-9. VonBargen was out of custody, therefore, the initial competency evaluation took a considerable amount of time. CP 16-26. While waiting for Western State Hospital to conduct its initial evaluation, VonBargen had a

[1] There are two verbatim report of proceedings. The State will refer to the proceedings held on 11/30/17 as RP (11/30/17). The other verbatim report of proceedings containing three hearings; 7/25/18, 8/21/18, and 9/19/18, which is continually paginated will be cited as RP.

forensic psychological evaluation performed by, Dr. Brent Oneal, an independent licensed clinical psychologist. CP 22-34. Both evaluations found VonBargen was not currently competent, although disagreed as to how. CP 16, 32. The two evaluations diverged in their opinions of whether VonBargen's competency was restorable. CP 25, 34.

On July 25, 2018 the trial court held a competency hearing. RP 3-50; CP 37-38. Dr. Susannah David, Ph.D, the forensic evaluator from Western State Hospital, testified. RP 4-21. Dr. Oneal also testified. *Id.* After hearing the testimony and considering the arguments of counsel, the trial court ruled VonBargen was not competent to stand trial. RP 47; CP 38. The trial court further held the restoration process would not likely be successful for VonBargen, and therefore, the trial court would not order VonBargen to undergo the restoration process. RP 47-48; CP 38.

The State filed a Motion for Reconsideration. CP 35-36. After further briefing from the State and VonBargen, the trial court denied the State's Motion for Reconsideration. RP 55-56; CP 39-45. The trial court ultimately dismissed the State's case due to its inability to proceed because VonBargen was incompetent. CP 46-48.

The State timely appealed the trial court's rulings regarding its refusal to order VonBargen to undergo competency restoration. CP 50-56. The State will further supplement the facts in the argument section below.

## IV. ARGUMENT

### A. THE TRIAL COURT ERRONEOUSLY REFUSED TO ORDER VONBARGEN TO UNDERGO COMPETENCY RESTORATION IN VIOLATION OF RCW 10.77.086.

The trial court abused its discretion when it disregarded the expert from Western State Hospital's evaluation of VonBargen and determined the restoration process would likely not be successful for VonBargen. As a result, the trial court erred when it refused to comply with the mandatory provisions of RCW 10.77.086(1)(a)(i)(A), requiring the court to commit VonBargen for restoration proceedings after being found incompetent. This Court should reverse the trial court's rulings, remand the case to allow the State to prosecute VonBargen, and require the trial court to order the restoration process to proceed.

#### 1. Standard Of Review.

Courts of review defer to the trial court's judgment on matters regarding a defendant's mental competence. *State Coley*, 180 Wn.2d 543, 551, 326 P.3d 702 (2013). Only when a trial court abuses

its discretion, will the reviewing court reverse a trial court's competency determination. *Coley*, 180 Wn.2d at 551. "However, the burden of proof at a competency hearing is an issue of statutory interpretation that is reviewed de novo." *Id.*

**2. Trial Court Abused Its Discretion When It Determined, Contrary To The Overwhelming Evidence, That The Restoration Process Would Likely Not Be Successful And Therefore, Would Not Order VonBargen To Undergo Competency Restoration.**

A criminal defendant must be competent to stand trial. It is a fundamental principle incorporated within the Washington State and the Federal constitutions, as well as our state statutory framework, to protect incompetent defendants. U.S. Const. amend XIV; Const. art. I, §§ 3, 22; RCW 10.77.050; *Coley*, 180 Wn.2d at 551. The legislature in Washington State enacted RCW 10.77.050 to ensure, "no incompetent person shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity continues."

Unfortunately, there are times the competency of a person the State has alleged has committed a criminal offense is called into question. More seriously, there are times a person pending felony charges has their competency called into question. A defendant must be able to understand the nature of the proceedings and assist in their own defense in order to be competent to stand trial. RCW

10.77.010(15); RCW 10.77.050. When there are questions regarding a defendant's competency the trial courts are required to follow the standards and procedures set forth in Chapter 10.77 RCW.

If a defendant is believed to possibly be incompetent, the defense, prosecutor, or the trial court on its own motion, shall request the defendant be evaluated and a report generated regarding the mental condition of the defendant. RCW 10.77.060. Generally a prosecuting attorney has the ability to choose to discontinue the competency process, dismiss the charges without prejudice, and refer a defendant to a mental health professional, developmental disabilities professional, or chemical dependency professional who then determines the appropriate service needs. RCW 10.77.079(1). The prosecutor is not granted the discretion to dismiss when he or she has charged the defendant with a sex offense. RCW 10.77.090(2).

A defendant, in addition to the expert approved by the prosecutor, may have their own expert evaluate him or her regarding their competency to stand trial. RCW 10.77.070. The criminal proceedings are stayed while a defendant is incompetent. RCW 10.77.084. When a defendant, who is pending felony charges, is

found to be incompetent the trial court is required to order competency restoration proceedings. RCW 10.77.086(1).

The trial court had two competing expert opinions regarding the ability to restore VonBargen's competency. The expert hired by VonBargen, Dr. Oneal, opined VonBargen was not competent to assist in his own defense and he failed to understand the nature of the proceedings. CP 34. Dr. Oneal's report concluded, "Mr. VonBargen's competency-related problems are the result of a developmental disability that is quite unlikely to be improved via basic teaching or psychiatric medications. It is also worth noting Mr. VonBargen was not able to learn much of the information that he was taught during his competency evaluation." *Id.*

Conversely, Dr. David, the forensic psychologist from Western State Hospital, opined VonBargen was only incompetent in regards to his inability to assist in his own defense. CP 24. Dr. David's report concluded, "'Mild Intellectual Disability, in itself, would not preclude successful restoration, so says the literature. Our [,Western State Hospital,] restoration services are probably better set up for those barriers (lots of repetition and visual aids) than psychotic disorders in some respects.'" CP 25.

Dr. Oneal's report details a number of tests, gives explanation to different yields and shifts, and gives the DSM-V diagnosis of Intellectual Disability. CP 31. During the hearing to determine whether competency restoration would be sought, the prosecutor inquired about an IQ test Dr. Oneal had administered during his examination of VonBargen. RP 34. Dr. Oneal explained historically, typically an individual with a score of 55 to 70 would be considered to fall within the range of mild intellectual disability. *Id.* VonBargen's IQ scored a 73. *Id.* Yet, after completing all of his evaluation, Dr. Oneal in his report did not place a severity level on VonBargen's Intellectual Disability level, even though the DSM-V currently has four levels of severity specified for intellectual disability. DSM-V 33-36 (5th ed, 2013); RP 34-35; CP 31. Whereas, Dr. David noted with specificity, VonBargen's diagnosis was "Intellectual Disability (mild)." CP 22. Dr. David based this diagnosis on VonBargen's records and his presentation during their interview, noting the diagnosis was VonBargen's "historical diagnosis." *Id.*

Dr. David opined VonBargen's impairment was not so severe that he could not acquire new information. RP 18. Dr. David explained VonBargen's school records showed,

> They showed that he did require special education, that he has been considered intellectually disabled

> throughout his time in the public schools, but that he... Let's see what capacities he retained. I think they had him at a...
>
> He could read at the seventh grade level with 60 percent comprehension. He can write relatively clearly. He can do some math. He had been working on real life math and, according to the IEP, grasps most of the concepts. He completed special education curriculum in U.S. history, integrated science, world studies.
>
> I mean, I appreciate that that high school diploma is not necessarily equivalent to a standard high school diploma, but still this indicates that the disability is not so severe that he can't be, you know, mainstreamed into the school system. They -- in the school system they thought it was a reasonable expectation that he have a skilled service employment position in the future, which you would assume requires at least, you know, some degree of adequate intellectual functioning to be employed.

RP 19. Dr. David also testified VonBargen was able to retain information and recall it independently afterwards. RP 20. Dr. David explained the competency restoration program is didactic, it teaches about the court system and legal concepts, approximately four hours a day, five days a week. RP 11-12. VonBargen, while having a developmental disability, can still learn, he just does not function at the same capabilities as the average person. RP 13.

Dr. Oneal, while testifying, stated VonBargen's intellectual disability was significant. RP 26. Dr. Oneal explained, from his testing he found VonBargen demonstrated he was likely to shift his

responses to questions when pressured to do so, making VonBargen quite suggestible. RP 29. Dr. Oneal also stated VonBargen had a poor ability to retain and recall information. *Id.* Dr. Oneal explained individuals with intellectual disabilities are less likely to be restored than those with other conditions, such as psychiatric disorders. RP 31.

Dr. Oneal agreed the restoration process and VonBargen's attorney could help VonBargen learn about his right to testify. RP 41. Dr. Oneal asked VonBargen what he would do if a witness told a lie. RP 42. VonBargen replied, "'Testify or say that's a lie.'" RP 42. Dr. Oneal characterized VonBargen's response as indicative of VonBargen's poor decision making process. *Id.* Dr. Oneal's assessment was the answer should have been, discuss the matter with his attorney. RP 42-44.

After the testimony was complete, the trial court determined VonBargen was not currently competent. RP 47. The trial court then ruled it would not order restoration because it did not believe it would be "fruitful." *Id.* The trial court stated,

> There's sort of a hope that maybe there would be. And while education and classes can certainly teach people certain things and some people can learn those things, just because someone is able to at some point parrot back information that they have heard and, you know, learn it doesn't change the IQ, it does not change the

> suggestibility, it does not change the underlying intellectual disability that we have here. There's no medication that can be used to fix this. I mean, this is not that kind of a problem. So I think that it would be a real stretch to think that things are going to change in any significant way.
>
> You know, during cross examination, of Dr. Oneal there was a lot of... And I understand, Mr. Meyer, the points you were trying to make. But, you know, for example the IQ screening where he scored a 73 wasn't a full IQ test, it wasn't the whole. And so the experts do rely on some of the historical information that they have here. So we look at those things.
>
> And, you know, I guess the only way to answer this question for sure would be to go through the restoration and see if it worked. But given this record, there's not enough here for me to order that and I'm not going to put everyone through that. I'm not going to put the defendant through that when it is speculative, at best. In my opinion, it's my judgment that there is more than enough evidence here before me to suggest that that would not be successful.
>
> So for that reason, I am not going to order the restoration in this case.

RP 47-48.

The trial court abused its discretion when it determined the restoration process would not likely be successful and therefore, would not order VonBargen to undergo the restoration process. RP 47-48; CP 38. This Court will find a trial court abused its discretion "only when no reasonable judge would have reached the same conclusion." *State v. Rodriguez*, 146 Wn.2d 260, 269, 45 P.3d 541

(2002) (internal quotations and citation omitted). “A trial court abuses its discretion only when its decision is manifestly unreasonable or is based on untenable reasons or grounds.” *State v. C.J.*, 148 Wn.2d 672, 686, 63 P.3d 765 (2003), *citing State v. Stenson,* 132 Wn.2d 668, 701, 940 P.2d 1239 (1997).

The trial court disregarded evidence it even stated in its oral finding was important to look at in this matter. The trial court, in its attempt to minimize the limited IQ test Dr. Oneal gave VonBargen, which resulted in a score of 73, stated the test was not a complete IQ test, “so the experts do rely on some of the historical information that they have here. So we look at those things.” RP 48. The testimony from Dr. Oneal was VonBargen’s IQ has historically been in the low 60s to low 70s. RP 34. Dr. Oneal also testified a score from “55 to 70 is considered within the mild intellectual disability range”. *Id.* Dr. Oneal also explained “IQ is a very stable psychological construct.” RP 36.

Dr. David testified VonBargen is on the high end of the functioning scale, and his IQ is closer to a borderline range in regards to intellectual disability. RP 14. Dr. David’s forensic psychological report has a four page section devoted to VonBargen’s historical

information, titled "RELEVANT CLINICAL HISTORY." CP 17-21.[2]. Almost two pages of the report contain information regarding VonBargen's schooling and his learning capabilities. CP 19-20. Dr. David's report gave VonBargen the diagnosis of Intellectual Disability (mild) and stated it was consistent with his historical diagnosis. CP 22.

Yet, with VonBargen's IQ ranging historically from the low 60s to low 70s, which is consistent with the 73 (low 70s), and a Mild Intellectual Disability historical diagnosis, the opinion Dr. Oneal reached on the stand was VonBargen's intellectual disability was significant. RP 26. After summing up VonBargen's "Relevant Personal History" in two pages, Dr. Oneal, in his forensic psychological evaluation chose to not place a severity level on his diagnosis, simply giving VonBargen a diagnosis of Intellectual disability. CP 28-31.[3]

The trial court stated at the beginning of the proceedings, "I read the reports that were filed by both sides in this case." RP 3. Necessarily, if the trial court read the reports, it then understood

[2] While the Relevant Clinical History is five numerical pages, the contents is actually approximately four pages in length.

[3] Again, the Relevant Personal History section spans three numerical pages, but the contents are actually two pages in length.

VonBargen's history in regards to his ability to learn, and his historical diagnosis. In 2017, VonBargen had a seventh grade reading level, successfully completed, "GenEd Sr English," and his records indicate his ability to make improvements in his academic levels. CP 20. VonBargen's school psychologist, Regina Peck's letter explained what type of learning environment VonBargen has required and benefited from, "[s]mall group instruction, frequent use of repetition, modify/repeat/model directions, multi modality approaches, use of positive reinforcement, use of manipulatives and concrete materials/examples, extended time on tests and assignments, allowed to complete assignments and/or tests and alternative environments, emphasis on quality of work rather than quantity..." CP 19. VonBargen has a driver's license and is trusted by his family to drive a vehicle a limited distance from home.

The trial court disregarded all the historical information when it determined "there is more than enough evidence before me to suggest that [the restoration process] would not be successful." RP 48. There is no other explanation how the trial court could conclude having VonBargen attend a four hour class, five days a week, would likely not restore VonBargen's competency.

No reasonable judge would have read the reports of the two experts, listened to the testimony given at the hearing, and concluded attempts at restoration were purely hypothetical, theoretical, and high risk. *See* RP 48. The trial court called restoration in this matter "speculative, at best." RP 48. All restoration of competency attempts have some degree of speculation, as none are guaranteed. VonBargen finished high school, was attending Community College, could read, write, communicate, clearly understood, by the nature of the communications in this case, that what he was doing could subject him to criminal liability, and to ignore all of that on the basis that VonBargen was mildly intellectually disabled and therefore, learned slower, is an abuse of the trial court's discretion. This Court should find the trial court abused its discretion when it ruled the restoration process would likely not be successful, and, therefore VonBargen was not ordered to undergo competency restoration (Conclusion of Law 2.2). This Court should reverse and remand back the trial court.

**3. The Trial Court Disregarded The Mandatory Provisions Of RCW 10.77.086 And Therefore, Incorrectly Interpreted The Plain Meaning Of The Statute.**

Due to VonBargen being likely to regain competency, the trial court was required to follow the legislature's mandate and commit

VonBargen for competency restoration. RCW 10.77.086(1)(a)(i). The trail court's disregard of this provision was an incorrect interpretation of the statute and abuse of discretion and this Court should reverse and remand the matter back to the trial court for further proceedings.

The courts will not employ judicial interpretation if a statute is unambiguous. *State v. Steen*, 155 Wn. App. 243, 248, 228 P.3d 1285 (2010). "A statute is ambiguous when the language is susceptible to more than one interpretation." *Steen,* 155 Wn. App. at 248. When the reviewing court is interpreting a statute its "goal is to ascertain and give effect to the intent and purpose of the legislature in creating the statute." *State v. Stratton*, 130 Wn. App. 760, 764, 124 P.3d 660 (2005) (citation and quotations omitted). The court looks to the plain language in the statute, the context of the statue, and the entire statutory scheme to determine the legislative intent. *Steen*, 155 Wn. App. at 248; S*tratton*, 130 Wn. App. at 764 (citations omitted). Questions of statutory interpretation are reviewed de novo. *State v. Sandholm*, 184 Wn.2d 726, 736, 364 P.3d 87 (2015) (citation omitted).

The broad statute regarding competency restoration and commitment is RCW 10.77.084, titled "Stay of proceedings—Treatment—Restoration of competency—Commitment—Other

procedures." If a defendant is found to be incompetent the proceedings are stayed. RCW 10.77.084(1)(a). There are specific RCW provisions regarding commitment and placement for felony and non-felony charges, RCW 10.77.086 and RCW 10.77.088, which are specifically referenced and incorporated in the broader statute. RCW 10.77.084(1)(b). "The court may order a defendant who has been found to be incompetent to undergo competency restoration treatment at a facility designated by the department if the defendant is eligible under RCW 10.77.086 or 10.77.088." *Id.* These RCWs are also incorporated in a similar fashion in regards to dismissal of the proceedings. RCW 10.77.084(d). Therefore, it is clear when the trial court is dealing with a defendant pending a felony offense it is to follow the commitment procedures set forth in RCW 10.77.086 when a defendant has been found incompetent.

When a defendant facing felony charges has been found incompetent the trial court is required to commit him or her for restoration. RCW 10.77.086(1)(a)(i).

> (1)(a)(i) If the defendant is charged with a felony and determined to be incompetent, until he or she has regained the competency necessary to understand the proceedings against him or her and assist in his or her own defense, but in any event for a period of no longer than ninety days, the court:

> (A) Shall commit the defendant to the custody of the secretary who shall place such defendant in an appropriate facility of the department for evaluation and treatment; or
>
> (B) May alternatively order the defendant to undergo evaluation and treatment at some other facility or provider as determined by the department, or under the guidance and control of a professional person…

*Id.* The statute mandates commitment of incompetent defendants facing felony offenses, absent a finding by the court, or agreement of the parties, the defendant is unlikely to regain competency. RCW 10.77.086(1)(c).

The trial court erroneously ruled VonBargen was unlikely to regain competency. Absent this erroneously ruling, the trial court was required by statute to commit VonBargen for competency restoration. The trial court's failure to commit VonBargen for competency restoration was an abuse of discretion and an incorrect interpretation of the reading of the statute. RP 48; CP 38 (Conclusion of Law 2.2). This Court should reverse the trial court's erroneous conclusion of law, and remand VonBargen's case back to the trial court for further proceedings.

### B. THE TRIAL COURT ERRED WHEN IT FAILED TO GRANT THE STATE'S MOTION FOR RECONSIDERATION AND DISMISSED VONBARGEN'S CASE WITHOUT PREJUDICE.

VonBargen should have been committed for competency restoration after the State submitted its motion for reconsideration. The trial court instead denied the State's motion and dismissed VonBargen's case without prejudice. This Court should reverse the trial court's errors, and remand the matter back to the trial court to reinstate the prosecution and commit VonBargen for restoration proceedings.

#### 1. Standard Of Review.

Motions for reconsideration are reviewed by this Court for abuse of discretion. *West v. Dep't of Licensing*, 182 Wn. App. 500, 331 P.3d 72 (2014). A trial court's dismissal of criminal charges is reviewed for abuse of discretion. *State v. Perrow,* 156 Wn. App. 322, 327, 231 P.3d 853 (2010).

#### 2. The Trial Court Abused Its Discretion When It Denied The State's Motion For Reconsideration And Dismissed The Criminal Action.

The State filed a motion for reconsideration of the trial court's erroneous ruling determining VonBargen was not restorable and dismissing the charges. CP 35-36. As argued above, the trial court incorrectly ruled VonBargen would likely not be successfully

restored. Since this ruling was in error, the trial court was required, as argued by the State, to order VonBargen to undergo competency restoration. CP 35-36, 43-44.

The trial court failed to follow the statutory requirements of RCW 10.77.086, the specific statute for the commitment procedures for felony charges. The trial court did not require VonBargen to undergo the restoration process despite the statute mandating the restoration of defendant's found incompetent. RCW 10.77.086(1)(a)(i). Further, if the trial court dismissed charges due to finding VonBargen incompetent and unlikely to regain competency, it was required after dismissing the charges to order VonBargen to be evaluated for civil commitment. RCW 10.77.086(4). The trial court entered no such order. *See* CP 45-46.

The trial court based its denial of the State's motion for reconsideration on a misreading of RCW 10.77.086. The trial court in its ruling stated:

> I went back through the statutes and looked at them. I think the statute that the State was relying on, the 10.77.086, the first paragraph, it says "shall commit." That's fine but you have to read the rest of the statute and if you keep going in the statute specifically in that one, under paragraph 4 it talks about the following up and the order for civil commitment and the case says further the case shall not be dismissed if there's a substantial danger to others or a substantial likelihood of committing criminal acts jeopardizing public safety

> and security and there is substantial likelihood that the defendant will regain competency. And in this case there was testimony and it was my finding that there was not a substantial likelihood that he would regain competency. And so thus, it didn't make sense to follow the one portion of that statute that says shall commit when if you read the rest of the statute there is the provision for the useless act part of it. So for that reason the motion to reconsider is denied.

RP 55-56. Actually, subsection four (4) states, if the trial court finds the person is not likely to regain competency, or, if after several attempts to restore have been unsuccessful, the court may dismiss the case without prejudice. RCW 10.77.086(4). The section then goes on to state the trial court shall order the defendant to undergo the civil commitment process, in essence, be held for an evaluation by a designated crisis responder for purposes of filing civil commitment proceedings pursuant to chapter 71.05 RCW. *Id.* The trial court did not address the possibility of civil commitment for VonBargen or why it did not believe civil commitment would be appropriate. RP 47-49, 55-56.

The trial court cited to RCW 10.77.086(4) as its reasoning why restoration was not mandatory and its support for denying the State's motion for reconsideration. Yet, the trial court failed to follow the procedures set forth in subsection four (4), misinterpreting the statute in its oral decision. The trial court's denial of the State's motion for

reconsideration was an abuse of discretion. Therefore, the trial court erred and abused its discretion when it dismissed the State's case without prejudice. This Court should reverse, remand the matter back to trial court to reinstate the prosecution, with the directive the trial court enter an order to have VonBargen undergo competency restoration.

## V. CONCLUSION

The trial court abused its discretion when it determined VonBargen's competency was not restorable, and therefore erred when it refused to order VonBargen to undergo competency restoration. The trial court's denial of the State's motion for reconsideration and dismissal of the criminal charges, based on its erroneous rulings and understanding of the law was an abuse of discretion. This Court should reverse the trial court, remand the

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matter back to the trial court with the instruction that the State be allowed to proceed with the criminal case and VonBargen be ordered to undergo competency restoration.

RESPECTFULLY submitted this 10th day of April, 2019.

JONATHAN L. MEYER
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by:_____
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# Appendix A

Findings of Fact and Conclusions of Law

FILED
Lewis County Superior Court
Clerk's Office
AUG 21 2018
Scott Tinney, Clerk
By _____, Deputy

ORIGINAL

IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR LEWIS COUNTY

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| STATE OF WASHINGTON,<br><br>Plaintiff,<br><br>vs.<br><br>HAYDEN VONBARGEN,<br><br>Defendant. | No. 17-1-00635-21<br><br>FINDINGS OF FACT AND CONLCUSIONS OF LAW |

This matter came before the court to determine the competency of the defendant. The hearing was held on July 25, 2018. Present were:

1) Jonathan L. Meyer, Lewis County Prosecuting Attorney
2) Sharon Chirichillo, Attorney for the Defendant
3) Hayden VonBargen, Defendant
4) Dr. Brent Oneal; and
5) Dr. Susannah David, Western State Hospital.

Based on the hearing, the court makes the following findings of fact and conclusions of law.

## FINDINGS OF FACT

1.1 The defendant is charged by Information with four (4) counts of Communicating with a Minor for Immoral Purposes.

1.2 Defense counsel motioned the court for a competency evaluation to be completed by Western State Hospital.



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1.3 Pending the Western State Hospital evaluation, the defendant was evaluated by Dr. Brent Oneal.

1.4 The defendant was subsequently evaluated by Dr. Susannah David.

1.5 Based on expert testimony the Court finds the defendant is not currently competent to stand trial.

1.6 Although the experts disagreed on whether the defendant's competency could be restored, the Court finds that restoration would likely be unsuccessful.

1.7 ~~Dr. David testified that, although the defendant was currently not competent, the defendant was likely to regain competency during the restoration process~~.

JW

**CONCLUSIONS OF LAW**

2.1 The defendant is not competent to stand trial.

2.2 The restoration process will likely not be successful and, as a result, the court will not order the restoration process.

DATED this 21 day of August, 2018.

James W. Lawler

Judge James Lawler

Presented by:

JONATHAN L. MEYER
Lewis County Prosecuting Attorney

Jonathan L. Meyer, WSBA #28238
Prosecuting Attorney

Copy received; Approved as to form
Notice of Presentation waived:

Sharon Chirichillo, WSBA #32353
Attorney for Defendant



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## LEWIS COUNTY PROSECUTING ATTORNEY'S OFFICE

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| **Filed with Court:** | Court of Appeals Division II |
| **Appellate Court Case Number:** | 52823-1 |
| **Appellate Court Case Title:** | State of Washington, Appellant v. Hayden Vonbargen, Respondent |
| **Superior Court Case Number:** | 17-1-00635-6 |

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