

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

STATE OF WASHINGTON,	)	
	)	No. 53178-0-II
Appellant,	)	
	)	STATE'S ANSWER TO
v.	)	GELINAS'S MOTION
	)	TO DISMISS APPEAL
	)	FOR MOOTNESS
MARK GELINAS,	)	
	)	
Respondent,	)	
_____	)	

**A. IDENTITY OF RESPONDENT TO MOTION**

The State of Washington is the Appellant. This Court granted discretionary review on May 23, 2019. In its motion for discretionary review to this Court, the State addressed the mootness issue. The State is the respondent to Gelinas's motion to dismiss for mootness.

**B. FACTS RELEVANT TO MOOTNESS**

The preliminary facts are correctly set forth in this Court's May 23, 2019, "Ruling Granting Review". In his motion to dismiss for mootness, Gelinas states that "Mr. Gelinas' case has been resolved and he has no interest in proceeding." Motion to Dismiss at 2. It makes sense that Gelinas would have no interest in proceeding, in as much as he has

achieved his goal – nullification of the district court’s warrant authority in his case – and now that the underlying criminal case has been disposed with a plea bargain (Exhibit A), he has no interest in defending the advantage he enjoyed because his enjoyment of it is complete and irrevocable in this case.

Meanwhile, the district court has changed its boilerplate pretrial orders to include the following language:

Any hearings checked in this order are necessary hearings. The Defendant’s presence, unless waived by the court, is needed to administer the case, determine if the case is going to be settled, and resolve issues of non-compliance.

Exhibit B. And, apparently, no other attorney and no other defendant has challenged the district court’s authority to issue warrants for failure to appear at pretrial hearings.

However, there is still a state of uncertainty about the accumulation of outstanding warrants that predate the instant case, and there is uncertainty about what the result will be if Gelinias’s attorney or another attorney should in the future challenge the district court’s authority to issue warrants in some future case or cases. Was the procedure and ruling that was followed in the instant case merely a special ruling applicable only to Gelinias, or is the asserted legal principle a valid legal principle that is applicable to all pretrial warrants in district court?

**C. ARGUMENT**

Gelinas's brief to this Court was originally due October 31, 2019, but Gelinas failed to file a brief. Then, on November 7, 2019, Gelinas appeared in the district court and entered a guilty plea. Gelinas now asserts that the instant appeal is moot.

The subject of the State's appeal is the superior court's order nullifying the district court's authority (in this case) to issue a warrant for Gelinas's failure to appear at a pretrial hearing in the district court. Presumably, the superior court would rule the same in any district court case that presented the same facts – i.e., any case where the defendant seeks relief from the superior court because the district court issued an arrest warrant for the defendant because the defendant failed to appear at a pretrial hearing as ordered by the district court. The instant ruling of the superior court creates great uncertainty and confusion, because it is not clear whether the accumulation of outstanding warrants in the district court were issued unlawfully. Nor is it clear what action the district court should take in future cases where a particular defendant other than Gelinas fails to appear at a pretrial hearing as ordered by the court.

The authority, or lack of authority, for the district court to issue an arrest warrant in all cases where a district court defendant fails to appear

as ordered for a pretrial hearing is a matter of substantial and continuing public interest which is capable of repetition yet evading review. The public and the bar have great and continuing interest in receiving an authoritative determination from this Court.

This Court may exercise its jurisdiction to review a claim that is technically moot when the claim involves matters of continuing and substantial public interest. *State v. Clark*, 91 Wn. App. 581, 584, 958 P.2d 1026 (1998). To determine whether the public interest exception applies, the court considers the following criteria: “(1) the public or private nature of the question presented; (2) the desirability of an authoritative determination which will provide future guidance to public officers; and (3) the likelihood that the question will recur.” *In re detention of Cross*, 99 Wn.2d 373, 377, 662 P.2d 828 (1983) (citation omitted). The State contends that the facts described above support each of these three criteria in the instant case.

Because the instant case presents an issue that is technically moot, but which is a matter of substantial and continuing public interest that is capable of repetition but evading review, this Court should exercise its discretion to decide the ultimate issue notwithstanding technical mootness in this particular case. *Hart v. Dep’t of Soc. & Health Servs.*, 111 Wn.2d

445, 759 P.2d 1206 (1988); *State v. Clark*, 91 Wn. App. 581, 584, 958 P.2d 1026 (1998).

**D. CONCLUSION**

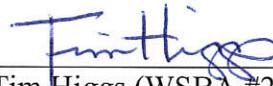
The nature of the question at issue here is such that it would as a practical matter always be moot before it could be reviewed at the Court of Appeals. Except in those cases where a defendant avoids the trial court for a period of many months or years, it is unlikely that any case would remain unresolved for the length of time necessary for an appeal to be completed. And in those cases where the defendant does avoid the trial court for the long period of time necessary to complete an appeal, complications would arise because a defendant who has failed to appear as ordered in the district court would also presumably be unavailable to answer an appeal.

Unless this Court rules on the merits of this case notwithstanding technical mootness, neither the public nor the bar can have any hope of ever obtaining a determinative ruling from this Court on this very important issue. Irrespective of what the final ruling is, the public, the prosecutors, the defense bar, and the trial court presumably all have a great interest in a determinative ruling from this Court. This Court was aware of the mootness issue when it accepted the case for review. The State

contends that this case should not be dismissed and that this Court should exercise its authority to decide the ultimate issue in this case irrespective of whether the case is technically moot.

Respectfully submitted this 26<sup>th</sup> day of December, 2019.

By:



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Tim Higgs (WSBA #25919)  
Deputy Prosecuting Attorney  
Attorney for Respondent

**Exhibit A**  
**(Judgment and Sentence)**

**DISTRICT COURT OF WASHINGTON  
FOR THE COUNTY OF MASON**

State of Washington  
Plaintiff,

vs.  
GELINAS, MARK  
Defendant.

No.(s) 7Z0817290

**JUDGMENT AND SENTENCE FOR:**  
 1)  Driving Under The Influence  AMENDED TO  
 Physical Control  
 2) \_\_\_\_\_  
 3) \_\_\_\_\_  
 (DUIJS)

The defendant is adjudged based upon a guilty plea, jury verdict, or bench trial. The court verified the defendant's criminal history and driving record and made findings as follows: (check all that apply)

GY Passenger under age 16  BAC \_\_\_\_\_  No Test,  Refusal  Drug related  THC \_\_\_\_\_  
 CDL Vehicle Information:  Hazmat vehicle,  Commercial vehicle,  16 Passenger vehicle, and

Therefore, the defendant is sentenced as follows:

	#1	#2	#3	
JAIL:	<u>364</u>	_____	_____	Credit for time served as determined by Jail Staff <input type="checkbox"/> the Sentence is deferred <input type="checkbox"/> Consecutive <input type="checkbox"/> Concurrent/Total days in Jail <u>1</u>
Suspended:	<u>363</u>	_____	_____	
To Serve:	<u>1</u>	<u>0</u>	<u>0</u>	

The Suspensions or Deferral of Sentence is for the period of probation pursuant to the conditions set forth:

Jail time shall be served in:

Mason County Jail, to begin \_\_\_\_\_  Mason County DUI Jail Alternative at defendant expense, to be completed within 3 months,  
 \_\_\_\_\_ Days on Electronic Home Monitoring (EHM) with Alcohol transdermal monitor if eligible and at defendant's expense.  
 EHM is to begin w/in  2  \_\_\_\_\_ weeks  EHM to be arranged prior to release from jail or to be served in jail.  
 The defendant is indigent as defined in RCW 10.101.010(3)(a)-(c)

	#1	#2	#3
FINE	\$ <u>5,000.00</u>	\$ _____	\$ _____
Fine Suspended	\$ <u>4,009.50</u>	\$ _____	\$ _____
Criminal Conviction fee (43.00)	\$ _____	\$ _____	\$ _____
Passenger under 16 fine	\$ _____	\$ _____	\$ _____
Public Defender costs (PDR)	\$ _____	\$ _____	\$ _____
Warrant Fee (SWF)	\$ _____	\$ _____	\$ _____
Restitution** (RTN)	\$ _____	\$ _____	\$ _____
DUI Emergency Response**(DER)	\$ <u>300.00</u>	\$ _____	\$ _____
Subpoena Costs (W)	\$ _____	\$ _____	\$ _____
Probation fees (ACT/MON)	\$ <u>3,000.00</u>	\$ _____	\$ _____
Other Costs	\$ _____	\$ _____	\$ _____
Alcohol violation Fee - 250.00 (DUC)	\$ _____	\$ _____	\$ _____
Criminal Traffic Penalty (TPD) (TPD is 50.00 + 52.50 PSEA = 102.50)	\$ _____	\$ _____	\$ _____
<b>TOTAL*:</b>	\$ <u>4,290.50</u>	\$ <u>0.00</u>	\$ <u>0.00</u>

Includes PSEA, Alcohol violator fee DUC, Etc.

**\*TOTAL FINES**  
 \$ 4,290.50 , to pay  
 \$ 50.00 monthly starting the  
 15<sup>th</sup> day of JANUARY, 2020.  
 \*total may not include all fees & costs.

⇒  WSP  MCS  \_\_\_\_\_

All payments shall be made through the clerk of this court, including restitution. \*\*Clerk will forward restitution to victim at address provided by the Prosecutor

Bail or Bond is:  Exonerated  Forfeited  Bail posted by Defendant is to be applied to fines.

**Mandatory Conditions of Sentence – DUI/Physical Control:**

- (a) The defendant shall not drive a motor vehicle without a valid license (b) The defendant shall not drive a motor vehicle without proof of liability insurance or other financial responsibility. (c) The defendant shall not drive or be in physical control of a motor vehicle with an alcohol concentration of .08 or more or a THC concentration of 5.00 nanograms per milliliter of whole blood or higher, within two hours after driving. (d) The defendant shall submit to a breath or blood alcohol test upon the reasonable request of a law enforcement officer. (e) The defendant shall not drive a motor vehicle without a functioning ignition interlock device as required by the Department of Licensing. For each violation of the above mandatory conditions, the court shall order your confinement for a minimum of 30 days, which may not be suspended or deferred. For each incident involving a violation, the court shall suspend your license for 30-days.
- No criminal violations of law or alcohol related infractions.
- Comply with the rules and requirements of the Department of Licensing regarding the installation and use of a functioning ignition interlock device.
- Comply with the requirements to install an ignition interlock device for 6 months in addition to any other ignition interlock device requirements imposed by the Department of Licensing or the court.(Passenger under 16, RCW 46.61.5055(6).)
- The Court has ordered the defendant to refrain from consuming any alcohol. The defendant must comply with alcohol monitoring as authorized by law.  The defendant shall pay the costs of monitoring.  The cost of monitoring shall be paid by \_\_\_\_\_ (RCW 46.61.5055(5))

**Conditions of Sentence – Reckless Driving/Negligent Driving – 1<sup>st</sup> Degree**

- (a) The defendant shall not drive a motor vehicle without a valid license and proof of liability insurance or other financial responsibility. (b) The defendant shall not drive or be in physical control of a motor vehicle with an alcohol concentration of .08 or more or a THC concentration of 5.00 nanograms per milliliter of whole blood or higher, within two hours after driving.
- The defendant shall submit to a breath or blood alcohol test upon the reasonable request of law enforcement officer.
- No criminal violations of law or alcohol related infractions.
- Comply with mandatory ignition interlock device requirements as imposed by the Department of licensing.

**Additional Conditions of Sentence – 24/7 Sobriety Program/Discretionary Ignition Interlock:**

- 24/7 Sobriety Program is available. For  6 months  \_\_\_\_\_ days  months:
  - Comply with the 24/7 Sobriety Program (RCW 46.61.5055(1) – (3))
  - Do not drive any motor vehicle unless it is equipped with an ignition interlock device (this does not authorize you to drive without a valid license)
  - Comply with discretionary ignition interlock device requirements. RW 46.20.720(1) (e):
    - For a period of \_\_\_\_\_ years  for \_\_\_\_\_ months drive only a motor vehicle equipped with a functioning ignition interlock device, which is in addition to any ignition interlock device restriction imposed by DOL.

Unless otherwise stated, the calibration level for any ignition interlock requirement imposed under this order shall be .025%  \_\_\_\_.  
**“Employer exemption:”** When the defendant provides an Employer Exemption declaration to the Department of Licensing, this order shall not apply to vehicles owned, leased, or rented by defendant’s employer or to those vehicles whose care and/or maintenance is the temporary responsibility of the employer and driven at the direction of the defendant’s employer as a requirement of employment during working hours. **Except that,** the employer exemption does not apply when the employer’s vehicle is assigned exclusively to the defendant and used solely to commute to and from employment.

**Additional Conditions of Sentence**

- Probation for 60 months.
  - Sentence Compliance Monitoring by Probation Services with monthly fee.
  - Actively Supervised probation with monthly fee. Abide by all rules and regulations of probation department.  
 Report to probation services in person today or on \_\_\_\_\_ / first business day after released from jail  
 Located at 419 N. 4<sup>th</sup> St., Shelton
- Do not use, possess or consume alcohol or non-prescribed controlled drugs, including marijuana.
- Do not go to bars, taverns, cocktail lounges or parties where alcohol or drugs are served.
- Take monitored antabuse daily or provide medical proof that you are unable to do so within 3 days.

DEFENDANT: GELINAS, MARK

Case No.: 7Z0817290

- Within  45  90 days, Obtain and file a copy of:  Substance Use disorder evaluation,  expanded alcohol assessment from a Washington State-approved agency, and file a copy of the evaluation/assessment within \_\_\_\_\_ days  Defensive drive class/safe driver class,  DUI Victim Impact Panel,  Other: \_\_\_\_\_
  - Follow through with all recommended treatment in a timely manner, but no later than 14 days after the evaluation. If you cannot do so, you must request a review and state your reasons in writing.
  - Defendant to sign authorization allowing treatment agency to provide treatment reports and UA reports to the court and probation and allowing treatment agency to communicate with the prosecutor's office.
  - Attend AA/NA or similar self-help programs \_\_\_\_\_ days per week, or as recommended by treatment provider.
  - Keep the court (and Probation) advised of your address in writing.
  - Department of Licensing Notice – DUI, Physical Control, Reckless Driving, Negligent Driving 1<sup>st</sup>
    - Department of Licensing Notice – Defendant under age 21 only.
- Count \_\_\_\_\_ is (a) a violation of RCW chapter 69.41 [Legend drug], 69.50 [VUCSA], OR 69.52 [Imitation drugs], and the defendant was under 21 years of age at the time of the offense OR (b) a violation under RCW 9.41.040 (unlawful possession of firearm), and the defendant was under the age of 18 at the time of the offense OR (c) a violation under RCW chapter 66.44 [Alcohol], and the defendant was under the age of 18 at the time of the offense, AND the court finds that the defendant previously committed an offense while armed with a firearm, and unlawful possession of a firearm offense, or an offense in violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW.
- Clerk's Action – The clerk shall forward an Abstract of Court Record (ACR) to the DOL, which must suspend/revoke the Defendant's driver's license.

Defendant is to appear at Show Proof: \_\_\_\_\_ at \_\_\_\_\_  
 Defendant to bring proof of compliance with conditions. Failure to appear will result in an Arrest Warrant

Other:  
**AFTER 2 YEARS, DEFENDANT MAY MOTION COURT TO BE TRANSFERRED TO BENCH PROBATION**  
**EVALUATION COMPLETE**

DATED: November 7, 2019

I have read the Judgment and Sentence  
And the rights, conditions and warnings  
 (page 4 of 4)

[Signature] 05/23/1980  
 Defendant's Signature Date of Birth

Address \_\_\_\_\_

Phone # \_\_\_\_\_

[Signature]  
 Judge/Court Commissioner/Pro-tem

[Signature] 53415  
 Prosecuting Attorney Bar #

[Signature] 18799  
 Defense Attorney Bar #

Written Waiver of Counsel if filed

## RIGHTS, CONDITIONS AND WARNINGS (DUI/PHYSICAL CONTROL)

1. **PUNCTUAL APPEARANCES.** You must appear in court at any time requested by the court throughout the period of time you have been placed on a deferred sentence or suspended sentence. You must pay all fines, costs and assessments when due. You must appear at the date and time assigned by the court or jail ready to serve your commitment.

2. **ADDRESS CHANGES.** You must keep the court advised of all address changes.

**PROBATION.** If you are placed on probation, you must contact the probation office not earlier than 10 days and not later than 20 days after you are sentenced. You must keep the probation office advised of all address changes. Court: Mason County District Court Probation, Telephone Number: (360) 427-9670 ext's 441, 335 or 538. Address: 419 N. 4<sup>th</sup> ST, Shelton, WA. 98584. If the court orders you to appear at a hearing regarding your compliance with probation and you fail to attend the hearing, your term of probation is tolled (the time does not count) until you appear on the record.

3. **EMPLOYMENT AND NEW VIOLATIONS.** You must keep the probation office informed of your employment status and any new violations of the law.

4. **IGNITION INTERLOCK.** Any device used must meet certification standards adopted by the Washington State Patrol and be installed by a vendor certified by the Washington State Patrol.

5. **UA, BA.** You must submit to a urinalysis or breath analysis upon request of your probation officer at your own expense.

6. **PROOF OF COMPLIANCE.** In each instance where you are requested to file proof of a condition checked on the Judgment and Sentence, the proof must be in writing, signed by the person supervising the required program and written on the agency's letterhead. The proof of completion must be filed with the probation office.

7. **RESTITUTION.** Restitution must be paid as follows: Send restitution payments to the court at 419 N. 4<sup>th</sup> St/PO Box "O", Shelton, WA. 98584. A check must include the case number. A restitution obligation may be enforced in the same way a civil judgment is enforced, including real property lien. A restitution obligation may be enforced up to 10 years following your release from confinement or from the date of Judgment and Sentence whichever is longer, and may be extended an additional 10 years if the court finds that you did not make a good faith attempt to pay.

8. **FAILURE TO MEET CONDITIONS.** Failure to meet any of the conditions checked off on the Judgment and Sentence or any of the conditions numbered 1 through 8 above, to appear as scheduled, and/or to pay financial obligations as scheduled may result in the filing of additional criminal charges, the issuance of a bench warrant for your immediate arrest, the revocation of your suspended sentence, the imposition of warrant costs, the suspension of your driver's license and the referral of your fines to a collection agency. If the suspended sentence is revoked because of failure to meet conditions, you are subject to the imposition of the maximum sentence and fine as permitted by law or such portion thereof as the court deems appropriate. This order shall remain in effect through the period of the suspended sentence until and unless changed by further order of the court.

9. **APPEAL RIGHTS.** You have the right to appeal the conviction pursuant to the Rules for Appeal (RALJ) or Criminal Rule 9.1 (CrRLJ). Unless a Notice of Appeal is filed in this court within 30 days after entry of the Judgment and Sentence or order appealed from, the right to appeal is waived. The Notice of Appeal must be served on all other parties. The court clerk will, if requested, supply a Notice of Appeal form. You have the right to an attorney on appeal. If you are unable to pay the costs, you have the right to have a lawyer appointed and portions of the trial record necessary for review prepared at public expense for an appeal. After a guilty plea, the right to appeal is limited.

10. **COLLATERAL ATTACK.** You may not file petitions or motions for collateral attack on a Judgment and Sentence more than one year after the judgment becomes final. "Collateral attack" means any form of post-conviction relief other than direct appeal and includes, but is not limited to, petitions for personal restraint or habeas corpus, or motions to vacate judgment, withdraw a guilty plea, arrest judgment or for a new trial.

**Exhibit B**

**(Generic example of boilerplate pretrial order currently in use)**

MASON COUNTY DISTRICT COURT, STATE OF WASHINGTON

STATE OF WASHINGTON  vs.  Plaintiff,  Defendant. [REDACTED] DOB	CASE NO.(S) [REDACTED] [REDACTED] [REDACTED] ORDER OF RELEASE AND SETTING COURT DATES
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**CONDITIONS OF RELEASE**

- IT IS ORDERED that the defendant is released until the matter is resolved on the following conditions:
- Upon posting a bail/bond for Case 1 - Case 2 - Case 3 -
  - Released upon Personal recognizance  Upon bail previously ordered  Defendant held without bail
  - Bail/Bond posted in this matter is hereby exonerated.
  - Defendant shall post bail at the next hearing unless all outstanding bench warrants are cleared.
  - Defendant shall have no criminal violations of law or alcohol related infractions
  - Do not drive without valid license and proof of insurance
  - Defendant shall not possess or consume any alcohol, marijuana or controlled substances without a prescription.
  - Defendant shall not go to bars, taverns, cocktail lounges or parties where alcohol, drugs or Marijuana are served.
  - Defendant shall not drive any motor vehicle unless it is equipped with a functioning ignition interlock device, and either the defendant or the certified interlock provider shall file written proof of installation within 5 business days.
  - Do not go on the property of and have no contact with
  - Defendant shall not use or possess firearms or other weapons.
  - Defendant shall follow all previously ordered conditions, except as herein modified.
  - Defendant shall notify the court in person or in writing of any change of residence or mailing address and telephone number. The Defendant shall remain in contact with his or her attorney. The Defendant shall appear at future court dates or probation appointments without having consumed alcohol or any non-prescribed drugs.
  - Pay warrant fee(s) of \$  Pay today  Pay within \_\_\_\_\_ days.
  - Do not leave the State without permission of the court

**COURT DATES**

Any hearings checked in this order are necessary hearings. The Defendant's presence, unless waived by the court, is needed to administer the case, determine if the case is going to be settled, and resolve issues of non compliance.

Readiness [REDACTED] 1:30 pm  [REDACTED]

Trial Date [REDACTED] 8:30 am

Review cases tracking - FSD 60 day 90 day

Need not appear if in compliance with previous court orders

COURT APPOINTED COUNSEL  Appointed  Does not qualify  Partially qualifies, Defendant to pay \$

Case continued on  State's  Defense motion  with objection  without objection

Done in open court in the presence of the Defendant, and Defendant has received a copy.

DATED AND FILED 12/26/2019

[REDACTED]

DEFENSE ATTORNEY

[REDACTED]

DEFENDANT

[REDACTED]

JUDGE/PRO-TEM

**WARNING: IF DEFENDANT FAILS TO APPEAR AND/ OR COMPLY WITH ANY OF THE ABOVE, A BENCH WARRANT MAY BE ISSUED.**

MDC: 2/15/18

**MASON CO PROS ATY OFFICE**

**December 26, 2019 - 2:52 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 53178-0  
**Appellate Court Case Title:** State of Washington, Petitioner v. Mark S. Gelinas, Respondent  
**Superior Court Case Number:** 18-2-00590-0

**The following documents have been uploaded:**

- 531780\_Answer\_Reply\_to\_Motion\_20191226145107D2624190\_4607.pdf  
This File Contains:  
Answer/Reply to Motion - Answer  
*The Original File Name was 53178-0-II --- State v. Gelinas --- Answer of State to Motion to Dismiss for Mootness.pdf*

**A copy of the uploaded files will be sent to:**

- bruce@brucefinlayattorney.com
- brucef@hcc.net

**Comments:**

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