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

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In re the Detention of B.L.R.,

Appellant.

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**RESPONDENT'S BRIEF**

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ROBERT W. FERGUSON  
Attorney General

MICHELLE J. NELSON  
Assistant Attorney General  
WSBA No. 48289  
Social and Health Services Division  
PO Box 40124  
Olympia, WA 98504-0124  
(360) 586-6565  
OID No. 91021

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## I. INTRODUCTION

B.L.R. is a 30-year-old man who suffers from both schizoaffective disorder and unspecified personality disorder with antisocial traits. His fifth admission to Western State Hospital occurred after he was found incompetent to stand trial for Assault in the Second Degree and Felony Harassment. At a civil commitment hearing in May 2018, B.L.R. was found to have committed acts constituting a violent felony and that he presented a substantial likelihood of repeating similar acts due to a mental disorder. Further, he was found to be gravely disabled.

In January 2019, a Pierce County commissioner granted a new 180-day commitment on the grounds that B.L.R., as the result of a mental disorder, continues to present a substantial likelihood of repeating acts similar to his charged criminal behavior and on the basis of grave disability. B.L.R. now challenges the sufficiency of the evidence supporting the trial court's determination that he is gravely disabled, but he has not challenged the trial court's determination that he is substantially likely to repeat acts similar to his charged criminal behavior due to a mental disorder. Because B.L.R. has failed to challenge the alternate basis of his commitment, there are no grounds to vacate the civil commitment order in its entirety and this appeal is moot. Alternatively, because substantial evidence supports the

trial court's findings, and the findings support the legal conclusion that B.L.R. is gravely disabled, the civil commitment order should be affirmed.

## **II. COUNTERSTATEMENT OF THE ISSUES**

- A. Is This Appeal Moot Because B.L.R. Has Failed to Challenge the Alternative Basis for His Civil Commitment?**
- B. Does Sufficient Evidence Support the Trial Court's Conclusion That B.L.R. Is Gravely Disabled?**

## **III. COUNTERSTATEMENT OF THE FACTS**

B.L.R. was admitted to Western State Hospital for the fifth time after he assaulted his father by punching him several times in the head and manually choking him until he lost consciousness. Clerk's Papers (CP) 30-32. As a result, B.L.R. was charged with one count of Assault in the Second Degree (Domestic Violence) (classified as a "violent offense" under RCW 9.94A.030), and one count of Felony Harassment (Domestic Violence), and was found incompetent to stand trial. CP 1-4.

In May 2018, the State petitioned to have B.L.R. involuntarily civilly committed on two bases. CP 5-6. First, that he had committed acts constituting a violent felony and that he presented a substantial likelihood of committing similar acts as a result of a mental disorder under RCW 71.05.280(3)(b). CP 6. Second, that he was gravely disabled as the result of a mental disorder under RCW 71.05.280(4). CP 6. The trial court ruled that the State had proven that B.L.R. had committed acts constituting

the felonies of Assault in the Second Degree (Domestic Violence) and Felony Harassment (Domestic Violence), that the acts he committed constituted a violent felony offense under RCW 9.94A.030, and that he presented a substantial likelihood of committing similar acts as a result of a mental disorder. CP 30-33. The trial court also found that B.L.R. was gravely disabled and ordered inpatient treatment at Western State Hospital for a period of up to 180 days. CP 31, 33.

In October 2018, Western State Hospital psychologist Shamyka Sutton, Ph.D., and psychiatrist Greg Longawa, M.D., petitioned the Pierce County Superior Court for an order allowing up to 180 days of involuntary treatment for B.L.R. CP 34-46. In the doctors' petition for civil commitment, they alleged that B.L.R. required continued hospitalization both because he continued to present a substantial likelihood of repeating acts similar to his charged criminal behavior due to a mental disorder and because he continued to be gravely disabled as a result of his mental disorder. CP 34-46.

After several continuances, a hearing on the petition was held on January 31, 2019. At the hearing, Dr. Sutton testified that this was B.L.R.'s fifth admission to Western State Hospital. Verbatim Report of Proceedings (VRP) 53. Dr. Sutton also testified that B.L.R. suffers from a mental illness and that B.L.R.'s current diagnosis is schizoaffective disorder and

unspecified personality disorder with antisocial traits. VRP 51. Dr. Sutton stated that B.L.R. continued to exhibit active signs of his mental illness, including suspiciousness, paranoid ideation, preoccupation with internal stimuli, mood lability, agitation, poor judgment and poor insight into his mental illness, possibly as a result of his paranoid ideation. VRP 51, 59.

Dr. Sutton further testified that B.L.R. would be unlikely to take his prescribed medications in the community because B.L.R. does not believe he has a mental illness and therefore does not believe his medications serve any purpose. VRP 53. Dr. Sutton explained that, while B.L.R. was willingly taking his medications within the highly structured setting of the hospital, he was only taking them to “get out.” VRP 53. As such, Dr. Sutton had “significant concerns” that B.L.R. would cease taking his medications in the community both based on B.L.R.’s belief that he does not have a mental illness and due to B.L.R.’s history of discontinuing his medications in the community, rapidly decompensating, and returning to Western State Hospital. VRP 53-54.

Dr. Sutton also testified that, in his expert opinion, B.L.R. would likely be unable to care for his basic needs of health and safety due to his mental disorder. VRP 52. Dr. Sutton explained that, because B.L.R. does not believe he has a mental illness, he refuses to sign financial paperwork that would enable him to access resources essential for a successful

discharge from the hospital. VRP 52. Without supports in the community, Dr. Sutton testified that B.L.R. would likely have difficulty obtaining housing, food, clothing and things of that nature. VRP 52.

B.L.R. also testified at the hearing. When asked about what he would do to secure supportive housing after discharge, B.L.R. testified that he did not know how to find an apartment or a group home independently and indicated that he would likely seek out a homeless encampment, even though he had never been to one before. VRP 78-80. Further, B.L.R. testified that he would be willing to take long acting injectable medication in the community, but also stated that he wanted to change his medication because he believes it causes him to experience seizures. VRP 68-71, 80-82. In response, Dr. Sutton testified that there was no evidence that B.L.R. had experienced any seizures. VRP 82-83.

The trial court found, by clear, cogent, and convincing evidence that B.L.R. suffers from schizoaffective disorder and unspecified personality disorder with antisocial personality disorder traits. CP 65; VRP 87. The court noted that B.L.R. had made some progress, but that he continued to demonstrate paranoia, suspiciousness, and had poor insight into his mental health condition. VRP 87. Further, the trial court found that B.L.R. was gravely disabled because, as a result of his mental disorder, he “is in danger of serious physical harm resulting from the failure to provide for his

essential needs of health or safety” and because B.L.R. “manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over [his] actions, [and] is not receiving such care as is essential for health and safety.” CP 65. The trial court also concluded that B.L.R. continued to be gravely disabled. CP 68. Furthermore, the trial court found that the State had presented prima facie evidence that B.L.R. continued to suffer from a mental disorder that resulted in B.L.R. continuing to present a substantial likelihood of committing acts similar to his charged criminal behavior and concluded that B.L.R. “continues to present a substantial likelihood of repeating acts similar to [his] charged criminal behavior.” CP 65, 68; *see also* VRP 48-49.

Based on these findings and conclusions, the trial court ordered B.L.R. to be detained for up to 180 days of involuntary treatment at Western State Hospital. CP 68. B.L.R. timely appealed. CP 72.

#### IV. ARGUMENT

##### A. **Because B.L.R. Has Not Challenged the Alternative Basis for His Civil Commitment the Relief Requested Is Unavailable and His Appeal Is Moot**

Under RCW 71.05.320(4)(c), an individual who is currently involuntarily committed for 180 days can be recommitted at the end of his commitment period if the individual, as the result of a mental disorder, continues to present a substantial likelihood of repeating acts similar to their

charged criminal behavior. This is an independent basis for recommitment for up to 180 days of involuntary treatment separate and apart from a determination of grave disability.

Where the charge underlying the finding of incompetence is for a felony classified as violent under RCW 9.94A.030, at the initial commitment hearing, the court must determine whether the acts the person committed constitute a “violent offense” under RCW 9.94A.030. RCW 71.05.280(3)(b). Once the court has made an affirmative special finding under RCW 71.05.280(3)(b) that a person has committed acts constituting a violent felony, and as a result of a mental disorder, presents a substantial likelihood of repeating similar acts, that finding serves as a basis to recommit that person for up to 180 days of additional involuntary treatment “whenever the petition presents prima facie evidence that the person continues to suffer from a mental disorder . . . that results in a substantial likelihood of committing acts similar to the charged criminal behavior[.]” RCW 71.05.320(4)(c)(ii). However, such a finding may not serve as a basis for recommitment when a person “presents proof through an admissible expert opinion that the person’s condition has so changed such that the mental disorder . . . no longer presents a substantial likelihood of the person committing acts similar to the charged criminal behavior.” *Id.*

In this case, at B.L.R.'s initial commitment hearing, the court made an affirmative special finding under RCW 71.05.280(3)(b) that B.L.R. had committed acts constituting a violent felony offense under RCW 9.94A.030, specifically, Assault in the Second Degree, and that he presented a substantial likelihood of committing similar acts as a result of a mental disorder. CP 30-33.

At B.L.R.'s recommitment hearing, in addition to being committed on the basis of grave disability, B.L.R. was also committed on the separate basis of continuing to present a substantial likelihood of repeating acts similar to his charged criminal behavior as the result of his mental illness. CP 65-68. The trial court found that the State had presented prima facie evidence that B.L.R. continued to suffer from a mental disorder that resulted in B.L.R. continuing to present a substantial likelihood of committing acts similar to his charged criminal behavior. VRP 48-49; CP 65. B.L.R. did not present any proof through an admissible expert that his condition had so changed such that he no longer presented a substantial likelihood of repeating acts similar to his charged criminal behavior. CP 65. Accordingly, the trial court concluded as a matter of law that B.L.R., as the result of a mental disorder, continued to present a substantial likelihood of committing acts similar to his charged criminal behavior, and ordered his detention and

continued treatment at Western State Hospital on that basis independent of the determination that B.L.R. is also gravely disabled. CP 68.

As such, even if this Court determines that the evidence and facts are insufficient to support the trial court's conclusion that B.L.R. is gravely disabled, the recommitment order cannot be vacated in its entirety because B.L.R. has not appealed the trial court's findings or conclusion that B.L.R., as the result of a mental disorder, continues to present a substantial likelihood of committing acts similar to his charged criminal behavior. *Weyerhaeuser Co. v. Commercial Union Ins. Co.*, 142 Wn.2d 654, 693, 15 P.3d 115 (2000), *as amended* (Jan. 16, 2001) (quoting *State v. Kalakosky*, 121 Wn.2d 525, 540 n.18, 852 P.2d 1064 (1993)) ("Only issues raised in the assignments of error . . . and *argued* to the appellate court are considered on appeal."); *see also* RAP 10.3(a)(6) (appellant's brief must provide argument and citations); RAP 12.1(a) (appellate court will decide case only on the basis of issues set forth in briefs). Therefore, the relief B.L.R. requests—that his recommitment order be vacated—is not available. Br. Appellant at 10. Because no effective relief is available, this appeal is moot.

An appeal is moot where it presents merely academic questions and where the court can no longer provide effective relief. *In re Det. of M.K.*, 168 Wn. App. 621, 625, 279 P.3d 897 (2012). In *M.K.*, the court held that

an appeal of an involuntary civil commitment order on the basis of grave disability alone was not moot when the civil commitment order expired because an involuntary civil commitment order can have collateral consequences for future civil commitment determinations. *Id.*; *see also* RCW 71.05.245; RCW 71.05.285. The court explained that “we may provide effective relief from an expired involuntary commitment order that was not supported by clear, cogent, and convincing evidence, by vacating the commitment order to ensure that a trial court will not rely on it in subsequent involuntary commitment determinations.” *In re Det. of M.K.*, 168 Wn. App. at 629-30.

In *M.K.*, the patient was committed solely on the grounds of grave disability. *Id.* at 622. As such, vacating the order when the grave disability determination was not supported provided effective relief because thereafter no order existed which could affect subsequent civil commitment proceedings. In contrast, here, B.L.R. was recommitted on two separate bases, grave disability and continuing to present a substantial likelihood of repeating acts similar to his charged criminal behavior as the result of his mental illness. CP 65-68. Because B.L.R. has failed to challenge the second basis of his civil commitment, the only relief available would be for this Court to vacate the grave disability determination. But even if this Court were to vacate the grave disability determination, the recommitment order

cannot be vacated in its entirety because B.L.R. has not challenged the trial court's determination that he continues to present a substantial likelihood of repeating acts similar to his charged criminal behavior as the result of his mental illness. Unlike the circumstances in *M.K.*, even if this Court were to vacate the grave disability determination, B.L.R.'s recommitment order would continue to exist, would continue to provide a basis for his detainment, and could still have collateral consequences for future civil commitment determinations. In other words, even if this Court were to vacate the grave disability determination, doing so would not overturn B.L.R.'s civil commitment.

Although this Court may provide the relief of vacating B.L.R.'s grave disability determination, it cannot properly provide the *effective* relief of vacating his recommitment order in its entirety. Because no effective relief is available, this appeal is moot.

**B. Sufficient Evidence Supports the Trial Court's Determination That B.L.R. Is Gravely Disabled**

B.L.R. is incorrect when he contends that the trial court erred in finding him gravely disabled. Br. Appellant at 1. In cases where the trial court has weighed the evidence, the appellate court's review is generally "limited to determining whether substantial evidence supports the findings and, if so, whether the findings in turn support the trial court's conclusions

of law and judgment.” *In re LaBelle*, 107 Wn.2d 196, 209, 728 P.2d 138 (1986). But when sufficiency of the evidence is challenged, the test for the appellate court is whether there was any “evidence or reasonable inferences therefrom to sustain the verdict when the evidence is considered in the light most favorable to the prevailing party.” *Goodman v. Boeing Co.*, 75 Wn. App. 60, 82, 877 P.2d 703 (1994). In this case, substantial evidence supports the trial court’s findings of fact, and the findings of fact support the trial court’s legal conclusion that B.L.R. is gravely disabled. Accordingly, the trial court’s order should be affirmed.

**1. B.L.R. did not challenge any of the trial court’s findings of fact and substantial evidence supports the trial court’s findings of fact**

A trial court’s findings of fact are not to be disturbed on appeal if they are supported by substantial evidence. *Davis v. Dep’t of Labor & Indus.*, 94 Wn.2d 119, 123, 615 P.2d 1279 (1980). As a corollary to this rule, unchallenged findings of fact become verities on appeal. *Id.* If findings of fact are not challenged, “it is unnecessary for [the appellate court] to search the record to determine whether there is substantial evidence to support them.” *Id.* In this case, B.L.R. does not assign error to any of the trial court’s findings of fact; rather, B.L.R. challenges the trial court’s conclusion of law that, based on the facts presented, B.L.R. is gravely

disabled. Because B.L.R. does not challenge any of the trial court's findings of fact, all of the factual findings are verities on appeal.

Even if this Court does evaluate the trial court's factual findings, all of the trial court's findings are supported by substantial evidence. Substantial evidence is evidence sufficient to "persuade a fair-minded person of the truth of the declared premise." *E.g.*, *Lillig v. Becton-Dickinson*, 105 Wn.2d 653, 658, 717 P.2d 1371 (1986) (quoting *Ridgeview Properties v. Starbuck*, 96 Wn.2d 716, 719, 638 P.2d 1231 (1982)). The standard of proof in a 180-day civil commitment hearing is clear, cogent, and convincing evidence. RCW 71.05.310; *see also LaBelle*, 107 Wn.2d at 209. Clear, cogent, and convincing evidence is evidence that is highly probable. *LaBelle*, 107 Wn.2d at 209. Therefore, if factual findings are challenged, the appellate court evaluates whether the trial court's findings of fact are supported by evidence that a fair-minded trier of fact could reasonably have found to be highly probable. *Id.* In this case, the trial court's findings are directly attributable to the testimony of Dr. Sutton. A fair-minded trier of fact could reasonably have found the evidence presented by Dr. Sutton to be highly probable. This Court should either accept the trial court's findings of fact as verities on appeal, or alternatively, determine that substantial evidence supports all of the trial court's findings of fact.

**2. Sufficient evidence supports the trial court’s conclusion that B.L.R. is gravely disabled**

Under RCW 71.05.320(4)(d), an individual who is currently involuntarily committed for 180 days can be recommitted at the end of his commitment period if the individual continues to be gravely disabled.

“Gravely disabled” is defined as:

[A] condition in which a person, as a result of a mental disorder . . . (a) Is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety; or (b) manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety.

RCW 71.05.020(22).

The statute sets forth two alternative definitions of gravely disabled, either of which provides a basis for involuntary commitment. *LaBelle*, 107 Wn.2d at 202. To establish grave disability under RCW 71.05.020(22)(a), the evidence is required to show “a substantial risk of danger of serious physical harm resulting from failure to provide for essential health and safety needs.” *Id.* at 204. In order to establish grave disability under RCW 71.05.020(22)(b), the evidence “must include recent proof of significant loss of cognitive or volitional control . . . [and] must reveal a factual basis for concluding that the individual is not receiving or would not receive, if released, such care as is essential for his or her health

or safety.” *Id.* at 208. In this case, the trial court ruled that B.L.R. met the criteria for grave disability under both prongs (a) and (b) of the statute’s definition of grave disability. CP 65. If the court orders 180 days of commitment under RCW 71.05.320(6), the commitment can take place in a less restrictive alternative in the community, or in a more restrictive setting if the court finds that the best interests of the person or others will not be served by less restrictive treatment. RCW 71.05.320; see *Matter of J.S.*, 124 Wn.2d 689, 698, 880 P.2d 976 (1994).

**a. Sufficient evidence supports the trial court’s conclusion that B.L.R. is gravely disabled under RCW 71.05.020(22)(a)**

In this case, the evidence and the findings support the conclusion that B.L.R. is gravely disabled under RCW 71.05.020(22)(a). The definition of grave disability under prong (a) does not require that the danger of serious harm be “imminent.” *LaBelle*, 107 Wn.2d at 203. But the State “must present recent, tangible evidence of failure or inability to provide for such essential human needs as food, clothing, shelter, and medical treatment which presents a high probability of serious physical harm within the near future unless adequate treatment is afforded.” *Id.* at 204-05. The *LaBelle* court recognized that a requirement of imminence might mandate the “premature release of mentally ill patients who are still unable to provide for their essential health and safety needs outside the confines of a hospital

setting but who, because of their treatment there, are no longer in 'imminent' danger of serious physical harm." *Id.* at 203.

Dr. Sutton testified that, in his expert opinion, B.L.R. would likely be unable to care for his basic needs of health and safety due to his mental disorder. VRP 52. Dr. Sutton testified that B.L.R. would likely have difficulty obtaining housing, food, clothing and things of that nature without sufficient supports. VRP 52. Dr. Sutton was specifically concerned with B.L.R.'s inability to meet his basic needs for shelter. VRP 52, 55. B.L.R. refuses to apply for services, such as social security disability benefits, which would provide him with financial resources to adequately meet his needs for shelter and other basic necessities such as food and clothing. VRP 52, 55. Dr. Sutton explained that B.L.R. refuses to pursue such services because he does not believe he has a mental disorder. VRP 52, 55.

B.L.R.'s own testimony confirmed Dr. Sutton's concerns. When asked about how he would meet his needs for shelter after discharge, B.L.R. admitted that he did not know how to find shelter independently. VRP 78-80. B.L.R. testified that he did not know how to make arrangements to live in an apartment or a group home himself and further testified that, because of this inability, a Western State Hospital social worker was performing this task for him. VRP 78-80. Further demonstrating B.L.R.'s inability to successfully meet his needs for adequate shelter,

B.L.R. testified that in the event of his discharge from the hospital he would seek out a homeless encampment, even though he had never been to one before. VRP 78-80.

Because the evidence established B.L.R.'s inability to provide for his basic needs of health and safety, including shelter, the trial court's conclusion that B.L.R. is gravely disabled as a result of a mental disorder under RCW 71.05.020(22)(a) should be affirmed.

**b. Sufficient evidence supports the trial court's conclusion that B.L.R. is gravely disabled under RCW 71.05.020(22)(b)**

The evidence and the findings also support the conclusion that B.L.R. is gravely disabled under RCW 71.05.020(22)(b). B.L.R. argues that he cannot be found "gravely disabled" because he was not "deteriorated" at the time of hearing. Br. Appellant at 9. B.L.R. misconstrues the intent of prong (b) of grave disability. As the *LaBelle* court explained, the prong (b) portion of the definition of grave disability "was intended to broaden the scope of the involuntary commitment standards in order to reach those persons in need of treatment for their mental disorders who did not fit within the existing, restrictive statutory criteria." *LaBelle*, 107 Wn.2d at 205-06. The expanded definition "permits the State to treat involuntarily those discharged patients who, after a period of time in the community, drop out of therapy or stop taking their prescribed medication and exhibit rapid

deterioration in their ability to function independently.” *Id.* at 206 (internal quotes omitted). “By permitting intervention before a mentally ill person’s condition reaches crisis proportions,” prong (b) of the grave disability definition enables the State to break the “‘revolving door’ syndrome,” a cycle of repeated hospitalizations, by providing “the kind of continuous care and treatment that could break the cycle and restore the individual to satisfactory functioning.” *Id.* In this case, the evidence and trial court’s findings support the conclusion that B.L.R. meets this second definition of grave disability.

B.L.R.’s argument that his cognitive and volitional control had improved during his time at the hospital ignores both the reasoning of the *LaBelle* court, as well as the wealth of evidence supporting the trial court’s conclusion that if B.L.R. were released, he would stop taking his prescribed medication and exhibit rapid deterioration in his ability to function independently. As the *LaBelle* court recognized, it is not surprising that a patient would show improvement after an initial period of commitment. Accordingly, the *LaBelle* court specifically rejected a strict and literal reading of the prong (b) definition of grave disability that would require a patient to be actively escalating at the time of the hearing, explaining such would:

result in absurd and potentially harmful consequences, for a court would be required to release a person whose condition, as a result of the initial commitment, has stabilized or improved minimally—*i.e.*, is no longer “escalating”—even though that person otherwise manifests severe deterioration in routine functioning and, if released, would not receive such care as is essential for his or her health or safety.

*LaBelle*, 107 Wn.2d at 207.

At the age of 28, B.L.R. had already experienced five admissions to Western State Hospital. VRP 53; CP 5-10, 37-39. Because state hospitals are reserved for cases involving “the most complicated long-term care needs of patients with a primary diagnosis of mental disorder,” *see* RCW 71.24.016(1) and RCW 72.23.025(1), the trial court’s concern with B.L.R.’s extensive history of rapid decompensation in the community after ceasing to take his medications, as well as his poor insight into his mental health condition, was justified and supported by the evidence.

Moreover, B.L.R. exhibited “recent proof of significant loss of cognitive or volitional control” when he assaulted his father by punching him repeatedly in the face and choking him until he lost consciousness in December 2017 after an argument over cleaning dishes. CP 31-32. This incident occurred only a few months after B.L.R. was released from his fourth admission to Western State Hospital to live with his father. CP 31-32. Additionally, at trial, Dr. Sutton testified that, although B.L.R. had not been assaultive since June 2018 and had not been observed responding to internal

stimuli since October 2018, that at the time of the recommitment hearing, B.L.R. remained actively psychotic, presenting with both suspiciousness and paranoia. VRP 51-52, 59-60.

Furthermore, while B.L.R. has been medication compliant within the highly structured setting of Western State Hospital, and his participation in treatment has improved, he continues to exhibit behaviors that have convinced Dr. Sutton that if he were released, even on a less restrictive placement, he would not take his medications in the community and would rapidly decompensate. VRP 53-56. B.L.R. continues to be suspicious, paranoid, and refuses to sign financial paperwork that would enable him to access resources essential for a successful discharge from the hospital. VRP 53-56. B.L.R. does not believe that he suffers from a mental disorder, and consequently, does not believe that his medications serve any purpose, and therefore would be unlikely to continue to take his medications in the community. VRP 53. Dr. Sutton explained that B.L.R. only takes his medications at the hospital so he can “get out.” VRP 53. Moreover, B.L.R.’s history of non-compliance in the community and rapid decompensation indicate a substantial likelihood that B.L.R. would again decompensate in the community without sufficient support, resulting in re-hospitalization or additional criminal offenses. VRP 54-56, 64-65. As Dr. Sutton explained:

He has shown in his history that he would rapidly decompensate, which would increase his paranoid ideation. His symptoms of auditory hallucinations would likely re-emerge and in the past, he's also used substances as a way[,] as a means to cope, which would further decompensate him and lead to re-hospitalization or lead to additional offenses.

VRP 54.

In Dr. Sutton's expert opinion, continued detention and treatment at Western State Hospital are essential to prevent the deterioration that B.L.R. has previously experienced from recurring. VRP 54-56, 64-65. There was no expert testimony to the contrary. While B.L.R. testified that he would be willing to take long acting injectable medication in the community, he caveated his response by stating that he wished to change his medication because it causes him to experience frequent seizures. VRP 68-71, 80-82. Notably, Dr. Sutton testified that there was no evidence that B.L.R. had experienced any seizures while at Western State Hospital and that the hospital would have documented and addressed such a medical issue were it present. VRP 82-83.

Because the evidence and the findings support the conclusion that B.L.R. is gravely disabled as a result of a mental disorder under RCW 71.05.020(22)(b), the trial court's conclusion that B.L.R. is gravely disabled as a result of a mental disorder should accordingly be affirmed.

## V. CONCLUSION

Because B.L.R. has not challenged his commitment on the basis that he continues to present a substantial likelihood of repeating acts similar to his charged criminal behavior as a result of his mental disorder, there are no grounds to vacate the trial court's order in its entirety and this appeal should be dismissed as moot. In the alternative, this Court should affirm the trial court's order committing B.L.R. to 180 days of involuntary treatment at Western State Hospital because the evidence and facts are sufficient to support the trial court's conclusion that B.L.R. is gravely disabled as a result of his mental disorder.

RESPECTFULLY SUBMITTED this 3rd day of September 2019.

ROBERT W. FERGUSON  
Attorney General



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MICHELLE J. NELSON, WSBA No. 48289  
Assistant Attorney General  
Attorneys for Respondent  
PO Box 40124  
Olympia, WA 98504-0124  
(360) 586-6565  
Michelle.Nelson@atg.wa.gov

**CERTIFICATE OF SERVICE**

I, *Holly McClure*, state and declare 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. On September 3, 2019, I served a true and correct copy of this **RESPONDENT'S BRIEF** and this **CERTIFICATE OF SERVICE** on the following parties to this action, as indicated below:

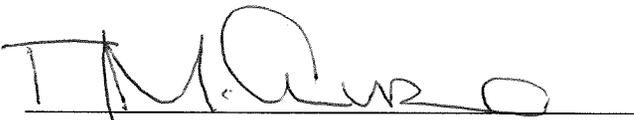
**Counsel for Appellant**

Lise Ellner  
Spencer Babbitt  
Law Offices of Lise Ellner  
PO Box 2711  
Vashon, WA 98070

**By E-mail PDF** (liseellnerlaw@comcast.net; babbitts@seattleu.edu)

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

DATED this 3rd day of September 2019, at Tumwater, Washington.

  
\_\_\_\_\_  
HOLLY MCCLURE  
Legal Assistant

**SOCIAL AND HEALTH SERVICES DIVISION, ATTORNEY GENERALS OFFICE**

**September 03, 2019 - 4:12 PM**

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