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Division II  
State of Washington  
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NO. 53655-2-II

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

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STATE OF WASHINGTON,  
Appellant,

v.

STEPHANIE POND-HILL,  
Respondent.

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

The Honorable Stephen M. Warning, Judge

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BRIEF OF RESPONDENT

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A. RESTATEMENT OF ISSUES PRESENTED

1. The state may not challenge the imposition of sanctions for the first time on appeal on grounds this argument was never raised in the trial court.

2. The trial court properly imposed sanctions under RCW 7.21.030(2)(c) which permits sanctions in excess of \$2000 per day to ensure compliance with its order to provide timely restoration treatment for Ms. Pond-Hill.

B. RESTATEMENT OF FACTS

The police arrested Ms. Pond-Hill for theft of a blouse despite the store owner asking that she not be charged. Supp. CP (Probable Cause Statement 10/1/2018). During the arrest, Ms. Pond-Hill resisted, and in the process broke some light bulbs worth \$16.02, and kicked the arresting officer. Id. The state charged Ms. Pond-Hill her Assault 3, resisting arrest and malicious mischief. CP 5-7.

Ms. Pond-Hill was incarcerated the date of the incident on September 28, 2018. RP 51, CP 5-7. On October 14, 2018 Dr. Patricia Rice a DSHS forensic MH psychologist provided an evaluation of Ms. Pond-Hill and determined she suffers from a

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1 During hearing incorrectly stated incarcerated Sept 27, 2018.

“psychotic mental disorder” such that she is legally incompetent to stand trial. CP 51-61. On October 16, 2018 the trial court ordered competency restoration treatment for Ms. Pond-Hill. CP 16-20.

Ms. Pond Hill is homeless and gravely disabled. RP 6. The state projected her admittance to Western State Hospital for competency restoration 3 months after the beginning of her incarceration sometime in mid-January 2019, but she was not admitted for restoration until March 8, 2019, 97 days after the initial order for restoration. RP 5, 9; CP 51-61.

Ms. Pond-Hill cannot function in the community on her own. RP 6. On November 13, 2018, one week prior to the expiration of speedy trial was set to expire, the court set a show cause hearing before ordering contempt sanctions in the amount of \$3000 per day to run until Ms. Pond Hill was admitted for restoration treatment. CP 31, 47, 62.

The Court also set a review hearing for the following week, November 20, 2018, when the state reiterated that it would not admit Ms. Pond-Hill for restoration before mid-January. RP 7. On November 20, 2018 the court released Ms. Pond-Hill on her own recognizance despite mental health professional Jeff Foster

explaining that Ms. Pond-Hill could not care for herself on the streets. RP 5-6.

The order for sanctions provides: "\$3000/day sanctions against DSHS until defendant sent for restoration, effective 11/13/18." CP 62. On November 13, 2018 the court's oral ruling is as follows:

Well, okay. Well, here's where we're at. The State -- or DSHS's position is that any possible time to try her is going to run out well before they're going to put her into competency restoration. I am not enthusiastic about the idea of putting her out on the street right now, given her circumstances.

I'm going to find the State in contempt. I'm going to order \$3,000 a day in fines. I'm going to put this over to next Tuesday, the 20th, at 1:30. Anticipate she's going to be getting out then, because there is no possible way she can be tried in a timely manner. And whatever can be done to connect her up with any kind of housing or anything else. I -- I don't see any other options for us.

RP 7.

In its memo resisting sanctions, the state did not argue that the court lacked the jurisdiction to impose sanctions but rather asked the court not to impose them because the state's failure to provide timely restoration treatment was not "intentional". CP 32-38. The state also argued that it was currently paying federal contempt sanctions and should not be required to pay more - despite its

failure to comply. Id.

On April 9, 2019 Dr. Jaqueline Means evaluated Ms. Pond-Hill and determined she had regained competency to stand trial .CP 51-61. On May 7, 2019 the court ordered DSHS pay sanctions in the amount of \$291,000 within 60 days. CP 47, 62.

The state appealed. CP 63-70. This timely response follows.

C. ARGUMENT

1. THIS COURT SHOULD NOT  
CONSIDER ARGUMENTS NOT  
RAISED IN THE TRIAL COURT

For the first time on appeal the state argued that the trial court lacked the authority to order sanctions under RCW 71.030(2)(d). This argument was never raised in the trial court and the trial court did not indicate that it ordered sanctions under this section. CP 47, 62.

An established rule of appellate review in Washington is that a party generally waives the right to appeal an error unless there is a specific objection at trial. RAP 2.5(a). This rule insulates some errors from review, and encourages parties to make timely objections, to give the trial judge an opportunity to address an issue before it becomes an error on appeal. This promotes the important

policies of economy and finality. *State v. Kalenbaugh*, 183 Wn.2d 578, 583-85, 355 P.3d 253 (2015); *State v. O'Hara*, 167 Wn.2d 91, 98, 217 P.3d 756 (2009). In this case, the state merely informed the trial court that its delay in ordering restoration services was not “intentional”. CP 32-38.

RAP 2.5(a)(3) provides an exception to this rule that is not applicable in this case. It applies for “manifest error[s] affecting a constitutional right.” RAP 2.5(a)(3). This exception strikes a careful policy balance, permitting the appellate court to remedying errors that meet the test for manifest error affecting a constitutional right, while at the same time, limiting review to require timely objections at trial to permit judges of the opportunity to correct errors as they happen. *Kalenbaugh*, 183 Wn.2d at 583 (citing *State v. Scott*, 110 Wn.2d 682, 686–87, 757 P.2d 492 (1988)).

To obtain review of an unpreserved error, the party claiming error must first demonstrate the error is truly of a constitutional magnitude, and if so, (2) has the party demonstrated that the error is manifest? *Kalenbaugh*, 183 Wn.2d at 583 (citing *O'Hara*, 167 Wn.2d at 98). “These gatekeeping questions open meritorious constitutional claims to review without treating RAP 2.5(a)(3) as a

method to secure a new trial every time any error is overlooked.” *State v. Lamar*, 180 Wn.2d 576, 582, 327 P.3d 46 (2014) (citing *State v. McFarland*, 127 Wn.2d 322, 333, 899 P.2d 1251 (1995)).

The Supreme Court explained in *Lamar*, “[f]or a claim of error to qualify as a claim of manifest error affecting a constitutional right, the defendant must identify the constitutional error and show that it actually affected his or her rights at trial.” *Lamar*, 180 Wn.2d at 585. The state does not meet this test because the asserted claim that the sanctions were unfair does not implicate a constitutional interest. Accordingly, the issue cannot be considered manifest.

Here, the state did not attempt to identify a constitutional right because none exists. Rather, without authority, the state simply asks this court to consider an unpreserved issue. (AOB at p. 5-6). This Court should deny the appeal because the state’s issue was not preserved for review and does not fit within the limited exception under RAP 2.5(a)(3).

2. THE TRIAL COURT PROPERLY IMPOSED \$3000 PER DAY IN SANCTIONS UNDER RCW 7.21.030(2)(c) TO COMPEL COMPLIANCE WITH THE 97 DAY DELAY IN PROVIDING RESTORATION SERVICE FOR MS. POND-HILL

The state's main argument, against the trial court's imposition of sanctions, raised for the first time on appeal, is meritless because the state's allegation that the trial court improperly ordered \$3000 per day in sanctions under RCW 7.21.030(2)(d), is an incorrect assumption not supported by the record.

The appellate court reviews the trial court's authority to impose sanctions de novo as a matter of law. *In re Interest of Silva*, 166 Wn.2d 133, 140, 206 P.3d 1240 (2009). A constitutional court has the inherent power to issue a contempt order for the purpose of trying to force compliance with its judgment. *State v. Ralph Williams' North West Chrysler Plymouth, Inc.*, 87 Wn.2d 327, 335-36, 553 P.2d 442 (1976); *Keller v. Keller*, 52 Wn.2d 84, 88, 323 P.2d 231 (1958); *Accord, Bero v. Name Intelligence, Inc.*, 195 Wn. App. 170, 179 n. 28, 381 P.3d 71 (2016).

Superior courts of this state have jurisdiction to hear and determine cases involving mentally ill persons, and to punish for

contempt, by virtue of art. IV, § 6 of the Constitution of the State of Washington and the enabling statutes. RCW 71.030; *State ex rel Richey v. Superior Court for King County*, 59 Wn.2d 872, 876, 371 P.2d 51 (1962); *State v. Estill*, 55 Wn.2d 576, 579, 349 P.2d 210 (1960). .

The superior court has statutory authority to punish for contempt under RCW 7.21.030. “[T]he purpose of RCW 7.21.030 is clearly to compel compliance. The remedial sanctions the statute expressly authorizes provide the parameters for such coercion.” *State v. Sims*, 193 Wn.2d 86, 95, 441 P.3d 262 (2019). RCW 7.21.030(2)(c) “expressly authorizes” “[a]n order designed to ensure compliance with a prior order of the court.” *Id*; *Sims*, 193 Wn.2d at 95.

The trial court did not expressly identify which subsection of RCW 7.21.030(2), it relied on to impose the \$3000 per day sanctions. (AOB at pp. 8, 12-13). However, the trial court was fully authorized to impose this sanction under RCW 7.21.030(2)(c).

RCW 7.21.030 provides:

(1) The court may initiate a proceeding to impose a remedial sanction on its own motion or on the motion of a person aggrieved by a contempt of court in the proceeding to which the contempt is related. Except

as provided in RCW 7.21.050, the court, after notice and hearing, may impose a remedial sanction authorized by this chapter.

(2) If the court finds that the person has failed or refused to perform an act that is yet within the person's power to perform, the court may find the person in contempt of court and impose one or more of the following remedial sanctions:

(a) Imprisonment if the contempt of court is of a type defined in RCW 7.21.010(1) (b) through (d). The imprisonment may extend only so long as it serves a coercive purpose.

(b) A forfeiture not to exceed two thousand dollars for each day the contempt of court continues.

**(c) An order designed to ensure compliance with a prior order of the court.**

(d) Any other remedial sanction other than the sanctions specified in (a) through (c) of this subsection if the court expressly finds that those sanctions would be ineffectual to terminate a continuing contempt of court.

(Emphasis added) *Id.*

RCW 7.21.030(2)(c) provided the trial court may impose any order it chooses as long as the goal is to ensure compliance. Here, the trial court gave the state months to comply with its order to provide Ms. Pond-Hill with timely restoration services. CP *ad passim*. Rather than make any effort to expedite the treatment, the state steadfastly refused to take any steps to comply with the court's order. RP 5.

Had the state made an effort by expediting the matter, perhaps the court would have ordered sanctions under RCW

7.21.030(2)(b), but since the state only promised treatment by mid-January, a promise it did not keep, the court imposed a \$3000 per day contempt sanction that ended when the state finally provided Ms. Pond-Hill with restoration services. RP 5; CP 47, 62.

The state controlled its own fate; it incurred \$291,000 in contempt sanctions due to its own inaction, refusing to take remedial action to end the delay in providing restoration treatment for a young woman who resisted arrest, likely not understanding why the police were upon her. CP 62.

The contempt order in this case is valid, plain and simple under RCW 71.030(2)(c); it was designed to compel compliance. Sanctions ended when the state finally complied 97 days after being ordered to provide restoration treatment for Ms. Pond-Hill. The state has not raised a single meritorious issue for this court to consider. Therefore, the order should remain intact and the appeal denied.

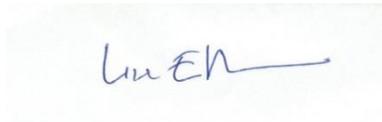
#### D. CONCLUSION

The state is responsible for the mis-handling of its resources. The order of contempt is a valid order authorized under the superior courts inherent constitutional authority as well as its statutory

authority. For these reasons, this Court should deny the appeal and affirm the superior court order imposing sanctions.

DATED this 17<sup>th</sup> day of January 2020.

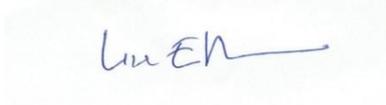
Respectfully submitted,

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I, Lise Ellner, a person over the age of 18 years of age, served the Office of the Attorney General [shsappealnotification@atg.wa.gov](mailto:shsappealnotification@atg.wa.gov) and Stephanie Pond-Hill, 3858 Pennsylvania, #19, Longview, WA 98632 a true copy of the document to which this certificate is affixed on January 17, 2020. Service was made by electronically to the prosecutor and Stephanie Pond-Hill by depositing in the mails of the United States of America, properly stamped and addressed.

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Signature

**LAW OFFICES OF LISE ELLNER**

**January 17, 2020 - 11:13 AM**

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