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

IN RE THE DETENTION OF N.G., Appellant

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Appeal from the Superior Court of Pierce County  
The Honorable Commissioner Diana L. Kiesel

No. 20-6-00105-8

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**BRIEF OF RESPONDENT**

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Should this appeal be dismissed as Appellant has not raised any issue related to the case before this Court?
2. If this Court does consider this appeal on its merit, has Appellant failed to show that the commissioner committed error when she held that the “total disregard” requirement for dismissal was not met where the statutory violation was unintentional?
3. Has Appellant failed to show any due process violation relating to Pierce County Cause Number 20-6-00105-8?

B. STATEMENT OF THE CASE.

1. Procedure

In 2014, Appellant was involuntarily committed to Western State Hospital under Pierce County Superior Court cause number 14-6-00862-7 (2014 case). CP<sup>1</sup> 83-86. Appellant was ultimately committed to 180-day commitment in the 2014 case on June 27, 2019. CP 75-86. That 180-day commitment expired on December 24, 2019 with no new 180-day petition

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<sup>1</sup> Citations to designated Clerk’s Papers will be to “CP.” Citations to the verbatim report of proceedings for hearing date January 19, 2020 will be to “RP 1/29/20.” Any citation to the verbatim report of proceedings for the hearing date February 2, 2020 will be to “RP 2/10/20.”

filed. CP 83-86.

On January 27, 2020, attending psychiatrists Dr. Bingcang and Dr. Crinean discovered the lapse in the commitment order and filed a new petition for 14-day involuntary commitment under Pierce County Superior Court cause number 20-6-00105-8 (2020 case). CP<sup>2</sup> 9-12. Appellant filed a motion to dismiss the petition based on a “total disregard of statutory requirements.” CP 13-22.

On January 29, 2020, the Superior Court Commissioner heard and denied Appellant’s motion to dismiss and ultimately granted the 14-day petition, finding that Appellant was gravely disabled by a preponderance of the evidence. CP 28-32; RP 1/29/20 24, 38.

On February 10, 2020, the commissioner granted a Petition<sup>3</sup> for 90 Days of Involuntary Treatment, finding Appellant gravely disabled by clear, cogent, and convincing evidence. CP 53-56; 2/10/20 14.

This appeal timely follows. CP 59-68.

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<sup>2</sup> According to the Clerk’s Papers sent document provided by the superior court, CP 9-12 is the Petition for 180 Day Involuntary Treatment filed January 27, 2020. However, the document filed on January 27, 2020 is the Petition for 14 Day Involuntary Treatment and, as of the timeframe of this appeal there had been no 180-day petition filed in Pierce County Superior Court cause number 20-6-00105-8. *See* CP 9-12. This appears to be a simple scrivener’s error.

<sup>3</sup> The 90-day petition was presented and argued by the Washington State Attorney General’s Office and, as such, is not otherwise referenced in Pierce County’s response.

## 2. Facts

On January 23, 2020, Appellant's attending psychiatrist was reviewing medical records and realized Appellant's 180-day order had expired. RP 1/29/20 at 14; CP 1-8. Dr. Bingcang immediately brought the discrepancy to Dr. Crinean's attention. RP 1/29/20 at 14. Realizing that the 2014 case was no longer active, Dr. Crinean contacted the Attorney General's Office and determined that it was necessary contact a designated crisis responder to evaluate Appellant and determine whether her current mental health supported a new detainment. RP 1/29/20 at 17, 19. Dr. Crinean contacted a designated crisis responder to evaluate Appellant. RP 1/29/20 at 14. The designated crisis responder responded within "a couple of hours," and determined Appellant was gravely disabled. RP 1/29/20 at 14; CP 3.

At the dismissal hearing, Dr. Crinean testified that the problem had been a computer error. RP 1/29/20 at 15-16. As a result of this error, the computer system was being evaluated and corrected by the hospital's IT Department. RP 1/29/20 at 16. Because Appellant is severely debilitated and cannot survive outside of a highly-structured environment, Dr. Crinean sought an evaluation by a designated crisis responder rather than discharging her. RP 1/29/20 at 14-15.

Appellant argued that the hospital's detainment between the

expiration of the 2014 case and the 2020 case was a total disregard of statutory requirements warranting dismissal of the 2020 case petition. RP 1/29/20 at 6-7; CP 13-22. Respondent initially argued that the motion should be dismissed because the matter was not properly before the court, as the error occurred under the 2014 case, not the 2020 case. RP 1/29/20 at 11-12. The court denied Respondent's motion and considered the dismissal motion on its merits. RP 1/29/20 at 13.

The commissioner considered the arguments of the parties, the testimony of the petitioner, RCW 71.05.010, and *In re the Detention of C.V.*<sup>4</sup>, and found that the situation did not warrant dismissal as there was no intentional act on the part of the petitioners. RP 1/29/20 at 23-24.

### C. ARGUMENT.

A party may appeal an order of Commitment entered by a Superior Court. RAP 2.2(8). If a petition is filed for fourteen day involuntary treatment or ninety days of less restrictive alternative treatment, the court shall hold a probable cause hearing within seventy-two hours of the initial detention of such person as determined in RCW 71.05.180. RCW 71.05.240(1); *see also* RCW 71.05.170. The burden of proof of a 14-day involuntary commitment proceeding is a preponderance of the evidence.

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<sup>4</sup> *In Matter of Detention of C.V.*, 5 Wn.App. 2d 814, 822, 428 P.3d 407(2018).

RCW 71.05.240(4)(a). The probable cause hearing provides due process to protect liberty interests by assuring prompt judicial review of the adequacy of the State's grounds for detaining an individual beyond the initial 72-hour evaluation and treatment period. *In re LaBelle*, 107 Wn.2d 196, 221-22, 728 P.2d 138 (1986).

1. THIS APPEAL SHOULD BE DISMISSED AS APPELLANT HAS NOT ALLEGED ANY ERROR THAT IS RELATED PIERCE COUNTY SUPERIOR COURT CAUSE NUMBER 20-6-00105-8.

This court should dismiss this appeal as there are no issues relating to the 2020 case upon which this court may provide relief. Appellant does not claim that the designated crisis responder improperly detained her or that the 72-hour detainment was improper. Nor does she assert that the 14-day petition was untimely with relation to the 72-hour detention, or that the 90-day petition was untimely with relation to the 14-day court order. She also does not argue that the court had insufficient evidence to support its findings of grave disability for both the 14- and 90-day orders. Rather, she claims the 2020 case should be dismissed because the petitioners continued to detain her after the expiration of an order in her 2014 case.

There is no dispute that Appellant was not released upon expiration of the 180-day order under the 2014 case. It is also undisputed that the petitioners had previously had the authority to detain Appellant under the

2014 case, and – incorrectly – believed they were still acting under that order for the 30-odd days after that order expired. Once they realized the order expired and no longer allowed for the detainment, they sought an independent evaluation to determine if Appellant was “now detainable” and prepared a new petition under a new cause number. RP 1/29/20 at 16-17. Dismissal of the 2020 case is not the appropriate remedy where Appellant was not unlawfully held in the 2020 case.

The Legislature has anticipated that events like the one before this court could occur and has provided a remedy. Any individual who knowingly, willfully or through gross negligence violates the provisions of this chapter by detaining a person for more than the allowable number of days shall be liable to the person detained in civil damages. RCW 71.05.510. If Appellant has been wronged by the petitioners, she has a remedy for civil damages expressly provided by statute.

Appellant’s contention that dismissal is necessary because her ability to avail herself of her civil remedy is incorrect and improperly substitutes her court-appointed attorney’s determination of her capacity to seek justice over her own. Her court-appointed counsel raised her concern regarding Appellant’s capacity to the court and the petitioners during the hearing. She also alerted the Northwest Justice Project, and the Disability Rights of Washington Association. *See* Brief of Appellant at note ii.

Appellant has been provided with means to assist her in pursuing an appropriate civil remedy if she so chooses, even taking into account her limited capacity. It is not for the attorneys or this Court to create new remedies based on a court-appointed counsel's determination of competency.

Dismissal of the 2020 petition also does not rectify any damages Appellant may have incurred. Had no new petition been filed, would appellant then be without a remedy as there was no new case to dismiss? She would not as she has the option to pursue civil damages. Dismissal of a properly-filed mental health petition for detainment in lieu of civil damages is improper.

Appellant may argue, as she did below, that this case warrants dismissal based on the requirement that a person can be detained prior to a designated crisis responder (DCR) meeting with him or her for only six hours. *See* RP 1/29/20 at 11-13; *see also* RCW 71.05.050(3). However, RCW 71.05.050(3) is limited to hospital emergency room detainments and it also clearly states that the six-hour limitation runs from the time the hospital staff notifies the DCR of the need for an evaluation. Here, Dr. Crinean called the DCR within "a couple of hours" of noticing the error. RP 1/29/20 at 14.

Appellant assigns no error to timeliness of the 2020 14-day petition

in relation to the initial discovery of the error, the timeliness of the 90-day petition in relation to the 14-day order, or the trial courts findings of fact and conclusions of law detaining her in the 2020 case. This appeal should be dismissed.

2. SHOULD THIS COURT CONSIDER THIS APPEAL ON ITS MERITS, APPELLANT’S CLAIMS FAIL.

The State's lawful power to hold those not charged or convicted of a crime is strictly limited. *Oviatt ex rel. Waugh v. Pearce*, 954 F.2d 1470, 1474 (9th Cir.1992) (citing *Baker v. McCollan*, 443 U.S. 137, 144, 99 S.Ct. 2689, 61 L.Ed.2d 433 (1979)). However, because the purpose of civil commitment is not punitive, but is instead to benefit the detainee as well as to protect the public, strict construction of the statutory scheme may not be appropriate in all cases. *In re Detention of V.B.*, 104 Wn. App. 953, 960, 19 P.3d 1062 (2001). “A state has a legitimate interest in treating the mentally ill and protecting society from their actions.” *In re Albrecht*, 147 Wn.2d 1, 7, 51 P.3d 73 (2002). Dismissal of an involuntary treatment petition and release of the person subject to the petition is not often the proper remedy because of the importance of providing treatment to those requiring it. *Matter of Detention of C.V.*, 5 Wn.App. 2d 814, 822, 428 P.3d 407 (2018).

- a. The trial court's determination that "total disregard" required intention conduct was correct.

RCW 71.05.010 requires courts to focus on the merits of the petition, except where the requirements of the chapter have been totally disregarded as provided in *In re Det. of C.W.*, 147 Wn.2d 259, 281, 53 P.3d 979 (2002); RCW 71.05.010(2). A presumption in favor of deciding petitions on their merits furthers both public and private interests because the mental and physical well-being of individuals as well as public safety may be implicated by the decision to release an individual and discontinue his or her treatment. RCW 71.05.010(2).

In *In re Detention of K.R.*, 195 Wn.App. 843, 847, 381 P.3d 158 (2016), the Court of Appeals found that the requirements of the chapter had been "totally disregarded." The designated crisis responder did not consult with an examining physician before detaining K.R., despite such consultation being required by statute. *Id.* at 846. There was no evidence presented to show why the consult did not occur; the State merely argued that the requirement was a "technical irregularity." *Id.* at 847.

In *Matter of Detention of C.V.*, the Court of Appeals found that dismissal was inappropriate where the hospital's single bed certification form violated the statutory requirements. 5 Wn.App. 2d 814 at 826. While lack of certification by the hospital was a violation of involuntary

treatment act requirements that the Court found “problematic,” it held that the conduct did not violate C.V.’s constitutional liberty interests or undermine the involuntary treatment act’s purpose. *Id.* at 826-27. The Court’s reasoning was based, in part, on the fact that C.V. was not denied therapeutic care for his mental illness. *Id.* at 827. Detaining a person at an uncertified facility was not a violation warranting dismissal because the trial court carefully reviewed the detailed records of C.V.’s diagnosis, care, and treatment when considering the motion to dismiss. *Id.* at 827. The court determined “[a] court with such detailed information about an individual’s specific treatment needs and a facility’s specific treatment efforts is well situated to analyze whether the involuntary treatment act requirements were totally disregarded.” *Id.*

Here, the trial court held that the provisions of the statute had not been totally disregarded because the error was unintentional. RP 1/29/20 at 24. “Disregard” is not defined in Chapter 71.05 RCW. However, Webster's defines “disregard” as “to treat without fitting respect or attention,” “to treat as unworthy of regard or notice,” and “intentional slight or neglect.” WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 655 (2002). Hence, “disregard” connotes more than an oversight, more than mere negligence. It involves willful or intentional negligence. In short, something must be regarded to be disregarded.

Common usage of the term “disregard” requires an intentional act or intentional failure to act. The Legislature set the standard even higher by requiring a showing of a “total” disregard. The error here was inadvertent.

Moreover, as in *C.V.*, the court also heard evidence of Appellant’s need for psychiatric care:

[Appellant] is a severely debilitated older adult whose abilities to survive outside of a highly-structured environment are severely limited. She cannot communicate most concepts. She - - she mostly just swears at people and occasionally tries to assault them.

RP 1/29/20 at 15. Dr. Crinean stated that Appellant could not survive outside of an inpatient setting. RP 1/29/20 at 14. If the motion for dismissal had been granted, Appellant would have been placed in serious risk of injury because she would have been released to the streets with no plan for care in place. RP 1/29/20 at 17. Appellant had no way to get shelter, no resources, no guardian, and is highly aggressive. RP 1/29/20 at 17-18. As in *The Matter of C.V.*, the commissioner here had details of Appellant’s need for treatment and was well-situated to analyze whether the statutory requirements were totally disregarded. To find a “total disregard” of the statute and grant the motion to dismiss, the commissioner would have completely undermined the involuntary treatment act’s purpose. 5 Wn.App. 2d at 827.

Appellant’s situation is precisely why the Legislature intended for

the courts to consider petitions on the merits. As argued above, RCW 71.05.510 provides a specific remedy for when a mental health patient is improperly detained. This statute supports the Legislature’s stated intent that petitions should be heard on their merits, with dismissal being appropriate solely when there has been a “total disregard” of the statutory requirements. Here, Appellant cannot be released to a nursing home based on her aggressive behavior. RP 1/29/20 at 31. She requires a highly-structured environment just to meet her physical and mental health needs as she cannot take her own medication, cannot see to her own hygiene without assistance, and cannot make even simple life choices. RP 1/29/20 at 31-32. Appellant is a “total care patient.” RP 1/29/20 at 37. To release this patient due to a statutory violation would defeat the Legislature’s stated purpose of the involuntary treatment act.

b. Appellant received all statutory and constitutional rights of due process for the 2020 case.

“[C]ivil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection.” *Addington v. Texas*, 441 U.S. 418, 425, 99 S.Ct. 1804, 60 L.Ed.2d 323 (1979) (emphasis added). Procedural due process imposes constraints on governmental decisions which deprive individuals of “liberty” or “property” interests within the meaning of the Due Process Clause of the

Fifth or Fourteenth Amendments to the United States Constitution. No person shall be deprived of life, liberty, or property, without due process of law. Washington Constitution Art. 1 sec. 3. To satisfy due process in the mental health involuntary commitment process, the statute requires a court to hold a probable cause hearing within 72 hours of the initial detention. RCW 71.05.240(1). The computation of the seventy-two hour period shall exclude Saturdays, Sundays and holidays. RCW 71.05.180.

Here, Appellant's probable cause hearing was held timely. The evidence before the trial court showed that Dr. Crinean discovered the lapse of Appellant's 180-day commitment order in the 2014 case "a couple of hours" before contacting the DCR. RP 1/29/20 at 14. It was at that point that Dr. Crinean no longer believed Appellant was being detained in the 2014 case. RP 1/29/20 at 16-17. On January 23, 2020, The DCR evaluated Appellant within two and a half hours of referral. *See* CP 1-8 at page 2. Thus, Dr. Crinean discovered the error and detained Appellant for a new evaluation on January 23, 2020.

Appellant's probable cause hearing was scheduled for January 28, 2020<sup>5</sup>. *See* CP 23-24. Appellant filed a motion to dismiss based on the error that is the subject of this appeal on the date of the hearing. CP 13-

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<sup>5</sup> January 23, 2020 was a Thursday. Excluding Saturdays and Sundays, a hearing date of January 28, 2020 complied with the 72-hour requirement.

22. The court granted the petitioner's motion for continuance for one day in order to respond to the motion finding the continuance was necessary in the administration of justice. CP 23-24. Nothing in this case or in Appellant's issues for this appeal implicates her due process rights to a timely hearing on the 2020 petition for 14-days of involuntary treatment. Her sole contention is that the improper detention under the 2014 case violated her right to due process in the 2020 case. As argued above, Appellant has recourse in RCW 71.05.510.

D. CONCLUSION.

The Legislature intended mental health patients who are detained more than the allowable number of days to have a civil damages remedy. While Respondent recognizes that Appellant was unlawfully detained after the expiration of the 2014 court order, Pierce County Superior Court Cause Number 20-6-00105-8 should not be dismissed in lieu of pursuit of the appropriate statutory remedy. For the reasons stated above, the Respondent respectfully requests this Court to deny the appeal.

DATED: July 10, 2020.

MARY ROBNETT  
Prosecuting Attorney

/s/ Kimberley DeMarco  
KIMBERELY DEMARCO  
Deputy Prosecuting Attorney  
WSB # 39218

**Certificate of Service:**

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington.

Signed at Tacoma, Washington, on the date below.

07/10/2020 /s/ Dayna Willingham  
Date           Signature

# PIERCE COUNTY PROSECUTING ATTORNEY CIVIL DIVISION

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