

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON  
Jun 10, 2015, 1:55 pm  
BY RONALD R. CARPENTER  
CLERK

NO. 91112-6

RECEIVED BY E-MAIL

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

---

STATE OF WASHINGTON,

Respondent,

v.

RICKEY ARELIIOUS BEAVER,

Petitioner.

---

**ANSWER TO BRIEF OF AMICUS CURIAE  
AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON**

---

DANIEL T. SATTERBERG  
King County Prosecuting Attorney

ALISON M. BOGAR  
Senior Deputy Prosecuting Attorney

DONNA L. WISE  
Senior Deputy Prosecuting Attorney  
Attorneys for Respondent

King County Prosecuting Attorney  
W554 King County Courthouse  
516 3rd Avenue  
Seattle, Washington 98104  
(206) 477-9497

TABLE OF CONTENTS

	Page
A. <u>INTRODUCTION</u> .....	1
B. <u>ARGUMENT</u> .....	1
THE ACLU'S ARGUMENTS ARE FUNDAMENTALLY FLAWED AND SHOULD BE REJECTED .....	1
C. <u>CONCLUSION</u> .....	8

TABLE OF AUTHORITIES

Page

Table of Cases

Federal:

Addington v. Texas, 441 U.S. 418,  
99 S. Ct. 1804, 60 L. Ed. 2d 323 (1979) ..... 3

Hickey v. Morris, 722 F.2d 543  
(9th Cir. 1984) ..... 2

Jones v. United States, 463 U.S. 354,  
103 S. Ct. 3043, 77 L. Ed. 2d 694 (1983) ..... 1, 2

Washington State:

In re Pers. Restraint of Kolocotronis, 99 Wn.2d 147,  
660 P.2d 731 (1983)..... 3

State ex rel. Carroll v. Junker, 79 Wn.2d 12,  
482 P.2d 775 (1971)..... 6

State v. Badger, 64 Wn. App. 904,  
827 P.2d 318 (1992)..... 6

State v. Bao Dinh Dang, 178 Wn.2d 868,  
312 P.3d 30 (2013)..... 5

State v. Jones, 99 Wn.2d 735,  
664 P.2d 1216 (1983)..... 2, 5

State v. Kuhn, 81 Wn.2d 648,  
503 P.2d 1061 (1972)..... 6

Statutes

Washington State:

10.77 RCW.....	1
71.05 RCW.....	2, 3
71.09 RCW.....	2, 3
RCW 10.77.025.....	3
RCW 10.77.190.....	5, 6

**A. INTRODUCTION**

The amicus curiae brief submitted by the American Civil Liberties Union (ACLU) of Washington is based on erroneous assumptions about proceedings relating to insanity acquittees and about the facts of this case, misstatements of the applicable law, and flawed policy arguments. It ignores the substantial constitutional protections afforded an insanity acquittee under chapter 10.77 RCW, and ignores the record in this case. This Court should reject the ACLU's arguments.

**B. ARGUMENT**

**THE ACLU'S ARGUMENTS ARE FUNDAMENTALLY  
FLAWED AND SHOULD BE REJECTED.**

Although civil commitment for any purpose constitutes a significant<sup>1</sup> deprivation of liberty, the ACLU fails to acknowledge that there is a fundamental difference between the civil commitment of insanity acquittees and individuals who are involuntarily civilly

---

<sup>1</sup> The United States Supreme Court did not characterize the hospitalization of insanity acquittees a "massive" deprivation of liberty as cited by the ACLU. See Brief of Amicus Curiae, at 1 (citing Jones v. United States, 463 U.S. 354, 368, 103 S. Ct. 3043, 77 L. Ed. 2d 694 (1983)). The only place in the Jones decision where psychiatric hospitalization is deemed a "massive intrusion on individual liberty" is in Justice Brennan's dissent, and that language is used in reference to involuntary civil commitment rather than NGRI proceedings. Jones, 463 U.S. at 372 (Brennan, J., dissenting).

committed under either chapter 71.05 RCW or chapter 71.09 RCW. As the United States Supreme Court has recognized, "insanity acquittees constitute a special class that should be treated differently from other candidates for commitment." Jones, 463 U.S. at 370. While an insanity acquittee "has a strong interest in avoiding erroneous confinement, the state has a substantial interest in preventing the premature release of persons who have already proven their dangerousness to society" by committing criminal acts. Hickey v. Morris, 722 F.2d 543, 549 (9th Cir. 1984). Accordingly, providing different procedures for insanity acquittees does not violate either due process or equal protection because those procedures apply in fundamentally different circumstances as compared with civil commitment. Id. at 546-49.

The ACLU also fails to recognize that unlike civil commitment under either chapter 71.05 RCW or chapter 71.09 RCW, an acquittal due to insanity cannot be sought by the State. In a criminal case, only the defendant may pursue an insanity defense, and only the defendant can prove his insanity at trial or enter an insanity plea. State v. Jones, 99 Wn.2d 735, 664 P.2d 1216 (1983). The State is constitutionally prohibited from proving

the defendant's insanity.<sup>2</sup> Id. Furthermore, by pleading and proving insanity at trial or by entering an insanity plea, an insanity acquittee voluntarily subjects him- or herself to psychiatric hospitalization, potentially for a period equal to the statutory maximum sentence for the offense charged. In re Pers. Restraint of Kolocotronis, 99 Wn.2d 147, 150, 660 P.2d 731 (1983); RCW 10.77.025(1). The procedures that are constitutionally required in NGRI cases are different from those required in other civil commitment cases for this important reason as well.

Despite the fundamental difference between insanity acquittals and civil commitments, the ACLU contends that because Western State Hospital (WSH) at some point opined that Beaver was no longer mentally ill, his return to WSH upon revocation of his conditional release was "preventative detention"<sup>3</sup> amounting to a "massive" deprivation of liberty. Brief of Amicus Curiae, at 9.

---

<sup>2</sup> By contrast, individuals who are civilly committed under chapter 71.05 RCW have not committed a crime as a result of their mental illness. Accordingly, due process requires the State to justify these individuals' involuntary commitment by proving that they are mentally ill and dangerous by clear and convincing evidence. Addington v. Texas, 441 U.S. 418, 425, 99 S. Ct. 1804, 1809, 60 L. Ed. 2d 323 (1979).

<sup>3</sup> Unlike civil committees, who are hospitalized to prevent them from harming themselves or others, insanity acquittees have already established that they are dangerous to the public because they have committed criminal acts. This is another way in which the ACLU fails to appreciate the distinction between NGRI cases and civil commitment under either chapter 71.05 RCW or chapter 71.09 RCW.

The ACLU's argument in this regard is both factually and legally incorrect.

Although WSH did support Beaver's final discharge in March of 2011, that opinion was disputed by the State's evaluator, Dr. Brian Judd, Ph.D. (CP 251-60) and by the Public Safety Review Panel (PSRP). CP 113-16, 361-64. So, contrary to what the ACLU contends, there was evidence that Beaver's mental illness was ongoing. Furthermore, Beaver did not oppose the revocation of his conditional release in January 2013 on grounds that he was no longer mentally ill. His only challenge to his ongoing mental illness was in his 2011 petition for final discharge; he withdrew that petition and it was dismissed before the issue could be fully litigated – he never raised the issue again. CP 104-09.

More importantly, the ACLU apparently is unaware that in October 2012, Sound Mental Health (SMH) provided a "current diagnosis" of Bipolar I Disorder (recent episode mixed in partial remission), Posttraumatic Stress Disorder, Cocaine Dependence, and Alcohol Dependence. CP 167. Accordingly, SMH recommended Beaver continue mental health treatment with his case manager. Id. These diagnoses were consistent with WSH's

diagnoses in 2005 when Beaver was initially found not guilty by reason of insanity.

The ACLU's allegation that the "lower court rulings failed to satisfy the applicable standard for returning a defendant to confinement in a state hospital" is inconsistent with the record. Brief of Amicus Curiae, at 7. The ACLU presents no evidence to support this allegation. Moreover, RCW 10.77.190 does not and never has required a renewed finding of a current mental illness in order to revoke a conditional release. Indeed, since the presumption of continued insanity was established at common law decades ago, and certainly since the State v. Jones decision in 1983, the State has never been tasked with the burden of proving the insanity acquittee's mental illness. Requiring the State to conduct a *de novo* commitment hearing at a revocation hearing – a hearing in which the State would apparently bear the burden of proof – would have been both unnecessary and unprecedented.

The liberty afforded a conditionally-released insanity acquittee is far from absolute. To the contrary, his or her "qualified or conditional liberty" is dependent upon compliance with the conditions imposed by the court. State v. Bao Dinh Dang, 178 Wn.2d 868, 883, 312 P.3d 30 (2013). The trial court undisputedly

has the discretion to modify or to revoke a conditional release. RCW 10.77.190(4); State v. Badger, 64 Wn. App. 904, 908, 827 P.2d 318 (1992) (citing State v. Kuhn, 81 Wn.2d 648, 650, 503 P.2d 1061 (1972)). A trial court's decision to revoke a conditional release is reviewed for abuse of discretion, which occurs only when the decision is "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). According to the ACLU, a modification would have been "a far more appropriate response to the condition violations at issue here" but it fails to explain how revoking Beaver's conditional of release was an abuse of discretion. Brief of Amicus Curiae, at 14. The trial court properly exercised its discretion in light of Beaver's behavior.

A conditional release is appropriate only for insanity acquittees who do not present a substantial danger to others or a substantial likelihood of committing further criminal acts and jeopardizing public safety. Beaver committed a new crime while conditionally released. He drank excessively, drove a vehicle while intoxicated, and collided with a parked car. In light of the direct nexus between Beaver's abuse of drugs and alcohol and his mental illness, the trial court's decision to revoke the conditional release

was reasonable. The ACLU's claim that modification would have been more appropriate is immaterial.

The ACLU's final policy argument, that revoking an insanity acquittee's conditional release under a "broken" mental health system infringes on the constitutional rights of other mentally ill persons who are awaiting evaluation and treatment, is simply irrelevant. Brief of Amicus Curiae, at 10-13. In essence, this argument suggests that a trial court's discretion to revoke an insanity acquittee's conditional release (even when the acquittee poses an obvious danger to the public) should be curtailed in order to save resources. The State is fully aware that the resources allocated to the State mental health system by the Legislature are inadequate. But inadequate funding, lack of bed space, and the issue of psychiatric boarding are simply not relevant to the issue presented here. Preventing trial courts from revoking the conditional release of insanity acquittees who have violated their conditions of release and who endanger public safety is not a solution to the mental health system's problems in Washington. To the contrary, the result urged by the ACLU and by the petitioner would simply create more problems of a different sort by requiring

evaluation and litigation of ongoing mental illness at every revocation hearing.

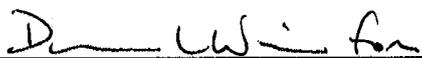
**C. CONCLUSION**

The ACLU failed to familiarize itself with the facts of this case and with NGRI procedures. The revocation of Beaver's conditional release did not violate procedural or substantive due process. Moreover, the policy suggested by the ACLU is irresponsible and dangerous. This Court should reject the arguments raised by the ACLU and reaffirm the constitutionality of the presumption of continued insanity.

DATED this 10<sup>th</sup> day of June, 2015.

Respectfully submitted,

DANIEL T. SATTERBERG  
King County Prosecuting Attorney

By:   
ALISON M. BOGAR, WSBA #30380  
Senior Deputy Prosecuting Attorney

By:   
DONNA L. WISE, WSBA #13224  
Senior Deputy Prosecuting Attorney  
Attorneys for Respondent  
Office WSBA #91002

Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to the attorneys for the petitioner,

Nacim Bouchtia Attorney for Amicus Curiae (ACLU) 215 13 <sup>th</sup> Avenue E. Apt 210 Seattle, WA 98102-5867 <b><u>nacim.bouchtia@gmail.com</u></b>	Mark Cooke Attorney for Amicus Curiae (ACLU) 901 5 <sup>th</sup> Avenue Suite 630 Seattle, WA 98164-2086 <b><u>mcooke@aclu-wa.org</u></b>
Nancy Talner Attorney for Amicus Curiae (ACLU) 901 5 <sup>th</sup> Avenue Suite 630 Seattle, WA 98164-2086 <b><u>talner@aclu-wa.org</u></b>	Casey Grannis Nielsen Broman & Koch, PLLC 1908 E Madison St Seattle WA 98122-2842 <b><u>grannisc@nwattorney.net</u></b>

containing a copy of the Answer to Brief of Amicus Curiae American Civil Liberties Union of Washington, in State v. Rickey Arelious Beaver, Cause No. 91112-6, in the Supreme Court, for the State of Washington.

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

Dated this 10<sup>th</sup> day of June, 2015.

uBrame

Name:  
Done in Seattle, Washington

## OFFICE RECEPTIONIST, CLERK

---

**To:** Brame, Wynne  
**Cc:** Wise, Donna; grannisc@nwattorney.net; nacim.bouchtia@gmail.com; mcooke@aclu-wa.org; talner@aclu-wa.org; Sloane, John; Bogar, Alison  
**Subject:** RE: State v Rickey Arelious Beaver, No 91112-6

Received 6/10/2015.

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

**From:** Brame, Wynne [mailto:Wynne.Brame@kingcounty.gov]  
**Sent:** Wednesday, June 10, 2015 1:46 PM  
**To:** OFFICE RECEPTIONIST, CLERK  
**Cc:** Wise, Donna; grannisc@nwattorney.net; nacim.bouchtia@gmail.com; mcooke@aclu-wa.org; talner@aclu-wa.org; Sloane, John; Bogar, Alison  
**Subject:** State v Rickey Arelious Beaver, No 91112-6

Please accept for filing the attached documents (Answer to Brief of Amicus Curiae American Civil Liberties Union of Washington) in State of Washington v. Rickey Arelious Beaver, No. 91112-6.

Thank you.

Donna L. Wise  
Senior Deputy Prosecuting Attorney  
WSBA #13224  
King County Prosecutor's Office  
W554 King County Courthouse  
Seattle, WA 98104  
206-477-9578  
E-mail: [Donna.Wise@kingcounty.gov](mailto:Donna.Wise@kingcounty.gov)  
E-mail: [PAOAppellateUnitMail@kingcounty.gov](mailto:PAOAppellateUnitMail@kingcounty.gov)  
WSBA #91002

This e-mail has been sent by Wynne Brame, paralegal (phone: 206-477-9497), at Donna Wise direction.

### CONFIDENTIALITY NOTICE

This e-mail message and files transmitted with it may be protected by the attorney / client privilege, work product doctrine or other confidentiality protection. If you believe that it may have been sent to you in error, do not read it. Please reply to the sender that you have received the message in error, and then delete it. Thank you.

