

MAY 04 2015

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Ronald R. Carpenter
Clerk

NO. 91112-6

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

RICKEY BEAVER,

Petitioner.

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

The Honorable Brian Gain, Judge

SUPPLEMENTAL BRIEF OF PETITIONER RICKEY BEAVER

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A. ISSUE

Whether involuntary commitment in a state mental health facility following revocation of conditional release violates due process in the absence of a judicial finding that the insanity acquittee currently suffers from a mental illness that makes him dangerous?

B. STATEMENT OF THE CASE

In 2005, Judge Brian Gain found Rickey Beaver not guilty by reason of insanity to the charge of residential burglary. CP 8-10. The court, finding Beaver was mentally ill and dangerous, committed him to a state mental hospital. CP 9-10 (FF 3-5, CL 4).

In 2011, the Western State Hospital (WSH) Risk Review Board recommended final discharge because Beaver had not shown consistent symptoms of mental illness and there was a recent pattern of Beaver being sent to WSH for noncompliance with conditions related to substance abuse "without accompanying symptoms warranting psychiatric care. This necessitates WSH start proceedings to send him to a substance abuse treatment facility, which delays the time for his substance abuse treatment and ties up valuable mental health resources." CP 367-68. The Risk Review Board flatly stated, "Mr. Beaver has a substance abuse problem

and requires treatment the hospital cannot provide" and "he does not need treatment for mental illness." CP 368.¹

In 2011, Beaver was conditionally released. CP 104-09. In 2012, the State petitioned for revocation, relying in part on a 2011 report in which Dr. Judd diagnosed Beaver with polysubstance abuse and antisocial personality disorder and opined he was at a moderate/high risk of reoffense. CP 206-69. Judge Gain ordered Beaver to remain in the community for several reasons, one of which was "revocation and commitment would only serve as preventative detention." CP 119.

In a series of 2012 reports, the WSH Risk Review Board evaluators concluded Beaver's psychiatric symptoms were in remission, he was not in need of WSH services and he had "reached his maximum benefit from psychiatric inpatient services." CP 119 (FF 4). Western State Hospital noted his need of the recovery skills that community based chemical dependency treatment would provide. CP 119 (FF 4).

The Risk Review Board restated its position from the year before:
"Given that Western State Hospital is a locked inpatient psychiatric facility with specialization in treatment regarding symptoms of mental illness as opposed to substance abuse, the question arose as to what

¹ The Public Safety Review Panel did not support final discharge, opining the Risk Review Board's recommendation was insufficiently substantiated. CP 361-65.

benefit Mr. Beaver could derive from further inpatient hospitalization. Mr. Beaver's progress through hospitalization at that time was reviewed and summarized as follows: He has shown no signs or symptoms of mental illness that cannot be explained by other means such as inducement by substance abuse or characterological factors." CP 111. It concluded, "Mr. Beaver has shown no signs or symptoms of mental illness. His presentation does not alter significantly whether or not he is taking psychiatric medication. There has been a pattern of his being sent to WSH without accompanying symptoms warranting psychiatric care." CP 112.²

In January 2013, Judge Gain presided over another revocation hearing. CP 138-39; RP 4-33. Beaver had violated release conditions, including driving while intoxicated and using cocaine. CP 143-44. Judge Gain recommitted Beaver to Western State Hospital. RP 33; CP 142-44. The court determined it was appropriate to revoke Beaver's conditional release "[d]ue to the violations of the conditional release and the threat to the public presented by Mr. Beaver." CP 144 (FF 9).

Judge Gain, however, noted his concern that Western State Hospital, in its last evaluation, "was of the opinion that there was no mental health disease." RP 30. He worried about using public safety as a

² The Public Safety Review Panel, however, recommended revocation and commitment at Western State Hospital because it believed Beaver remained a threat to public safety. CP 119 (FF 5), 113-16.

reason to commit someone to a mental hospital when there are no longer mental health issues to justify it. RP 31. That was a form of preventative detention, but the judge believed he did not "have any authority to do anything other than grant the State's motion." RP 31-32.

On appeal, Beaver argued due process required a finding of current mental illness before the court could revoke his conditional release and recommit him to a mental hospital. Brief of Appellant 10-27; Reply Brief at 1-11. The Court of Appeals held neither substantive nor procedural due process requires such a finding. State v. Beaver, 184 Wn. App. 235, 239, 336 P.3d 654 (2014), review granted, 345 P.3d 783 (2015).

While the appeal was pending, Beaver was conditionally released in October 2013 and then finally discharged in May 2014. Beaver, 184 Wn. App. at 241. Judge Gain, relying on recent WSH and PSRP reports, unconditionally released Beaver because "[w]hile WSH and the PSRP is of the opinion that Mr. Beaver potentially remains a risk for reoffending because of his criminal history, personality disorder and history of substance abuse, it is not as a result of a mental disease or defect." App. A. In recommending discharge, the WSH Risk Review Board cited the same reasons it had been citing since 2011: Beaver has shown no signs of mental illness and there was a pattern of Beaver being sent to WSH without accompanying symptoms warranting psychiatric care. App. A

(Ex. 1 attached to order). Beaver did not suffer from a mental disease outside of his historical and volitional substance abuse. Id. The Public Safety Review Panel, meanwhile, unanimously supported discharge based on the WSH Risk Review Board's determination that Beaver, while potentially remaining a risk for reoffending, was not at such risk as a result of a mental disease or defect. App. A (Ex. 2 attached to order).

C. ARGUMENT

1. SUBSTANTIVE DUE PROCESS REQUIRES A JUDICIAL FINDING THAT AN INSANITY ACQUITTEE IS DANGEROUS DUE TO MENTAL ILLNESS BEFORE THAT PERSON CAN BE RECOMMITTED TO A MENTAL HOSPITAL.

Of the rank horrors this world has to offer, being locked away in a mental hospital without being mentally ill must be one of them. And amongst its many absurdities, being committed to a mental hospital whose own evaluators do not believe the person suffers from a mental illness and who have no treatment to provide must be high on the list. That was the situation in which Beaver found himself.

The trial court, in recommitting Beaver to a mental hospital through revocation of his conditional release, did not find Beaver currently suffered from a mental illness that caused him to endanger public safety. In the absence of that finding, Beaver's involuntary detention in a mental hospital violated due process. U.S. Const. amend XIV; Wash. Const. art. I,

§ 3. Confinement without an accompanying mental illness that makes the person dangerous is not civil commitment. It is punishment in the form of preventative detention. The trial court recognized Beaver may not be mentally ill based on the reports before him, and that recommitment was a form of preventative detention, but believed it had no choice but to recommit Beaver anyway. RP 30-33. A holding from this Court that a current finding of mental illness is constitutionally necessary before recommitment to a mental hospital can take place will ensure others in the same situation will not suffer Beaver's unenviable fate.

"Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action." Foucha v. Louisiana, 504 U.S. 71, 80, 112 S. Ct. 1780, 118 L. Ed. 2d 437 (1992). "[C]ommitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." Jones v. United States, 463 U.S. 354, 361, 103 S. Ct. 3043, 77 L. Ed. 2d 694 (1983) (quoting Addington v. Texas, 441 U.S. 418, 425, 99 S. Ct. 1804, 60 L. Ed. 2d 323 (1979)). In Foucha, the U.S. Supreme Court stressed the substantive component of the due process clause, which "bars certain arbitrary, wrongful government actions 'regardless of the fairness of the procedures used to implement them.'" Foucha, 504 U.S. at 80 (quoting Zinermon v. Burch, 494 U.S. 113, 125, 110 S. Ct. 975, 983, 108 L. Ed. 2d

100 (1990)). Substantive due process "requires that the nature of commitment bear some reasonable relation to the purpose for which the individual is committed." Foucha, 504 U.S. at 79.

The reasonable relation between the nature and purpose of commitment disappears when a person is committed to a mental hospital without an accompanying mental illness that makes him dangerous. In Beaver's case, Western State Hospital reported Beaver did not have a mental disease or defect that made him dangerous and no treatment was available in the hospital to address his substance abuse problem. CP 111-12, 367-68. Yet Beaver was recommitted to the hospital without a judicial finding that he was dangerous due to a mental disease or defect.

"Civil commitment is permitted, but the commitment system 'must require that an individual be both mentally ill and dangerous for civil commitment to satisfy due process.'" In re Detention of D.W., 181 Wn.2d 201, 332 P.3d 423, 426 (2014) (quoting In re Detention of Albrecht, 147 Wn.2d 1, 7, 51 P.3d 73 (2002)). An insanity acquittee, like all those subject to civil commitment, may be committed to a mental institution "so long as he is both mentally ill and dangerous as a result of that mental illness, but no longer." State v. Reid, 144 Wn.2d 621, 631, 30 P.3d 465 (2001). Thus, "in order to confine an insanity acquittee to institutionalization against his or her will, the trial court must make two

determinations: first, that the acquittee suffers from a mental illness and second, that the acquittee is a danger to others." State v. Bao Dinh Dang, 178 Wn.2d 868, 876, 312 P.3d 30 (2013). That standard applies to the revocation of conditional release because it amounts to "confin[ing] an insanity acquittee to institutionalization against his or her will." Bao Dinh Dang, 178 Wn.2d at 876-77.

Due process therefore required the trial court to find Beaver was both currently dangerous and mentally ill before the State subjected him to involuntary institutionalization. The Court of Appeals, however, held substantive due process does not require a finding of mental illness before revocation of conditional release because an insanity acquittee's mental illness is presumed to continue. Beaver, 184 Wn. App. at 239.

There is a presumption that the mental condition of a person acquitted by reason of insanity continues. State v. Klein, 156 Wn.2d 103, 114, 124 P.3d 644 (2005). But where, as here, the trial court has before it substantial evidence that mental illness no longer exists, resort to a mechanical, unthinking reliance on a presumption that it still exists is to remain willfully blind to a problem of constitutional dimension. The inference of continuing mental illness "does not last indefinitely." State v. Sommerville, 86 Wn. App. 700, 710, 937 P.2d 1317 (1997) (citing United States v. Bilyk, 29 F.3d 459, 462 (8th Cir. 1994)), review denied, 133

Wn.2d 1023, 950 P.2d 477 (1997). To discharge their duty to uphold the constitution, trial judges must be afforded the ability to intelligently consider whether a person currently presents a danger *due to mental disease or defect* before recommitting that person to a mental hospital.

Over seven years had passed between the time Beaver was acquitted by reason of insanity in 2005 and the revocation of his conditional release in 2013. In 2011 and 2012, Western State Hospital professionals — the ones responsible for treating mental illnesses — reported that Beaver did not belong at Western State Hospital because he was not mentally ill. CP 111-12, 367-68. The presumption of continued mental illness ceases to control under such circumstances.

In concluding the presumption dispenses with the need for a finding, the Court of Appeals dismissed Beaver's reliance on this Court's decision in Bao Dinh Dang. According to the Court of Appeals, due process requires a finding of dangerousness to justify revocation only if the trial court never previously found the acquittee was dangerous. Beaver, 184 Wn. App. at 245-46. From that, the Court of Appeals distinguished Bao Dinh Dang from Beaver's case by pointing out Beaver was found to be mentally ill upon acquittal. Id.

The Supreme Court did state "Because Dang had never been found dangerous—indeed, his conditional release required a specific finding of

nondangerousness—the trial court was required to find Dang dangerous to revoke his conditional release." Bao Dinh Dang, 178 Wn.2d at 877. But its holding was stated in broader, unqualified terms: "we hold that a dangerousness finding is constitutionally required to revoke conditional release under Washington's insanity acquittal scheme." Id. at 875. And the Supreme Court rejected the Court of Appeals' analysis of the statutory scheme because it neglected the constitutional requirement of dangerousness without conditioning that rejection on whether an earlier finding of dangerousness had been made. Id. at 877-80. The Supreme Court did not hold a required finding of dangerousness was limited to the context where there is no previous finding.

Nor did it hold a presumption of dangerousness (or mental illness), if it exists due to an earlier finding, lasts forever and is irrefutable. Beaver's case squarely presents the question of what due process requires when a presumption exists but there is substantial evidence showing the presumption has been overcome.

Comparison with the civil commitment scheme under chapter 71.09 RCW is instructive. The annual review statute in sexually violent predator (SVP) proceedings satisfies substantive due process because the statutory basis for continued commitment requires current mental abnormality and dangerousness, which the State must periodically

reevaluate. State v. McCuiston, 174 Wn.2d 369, 385, 388, 275 P.3d 1092 (2012), cert. denied, 133 S. Ct. 1460, 185 L. Ed. 2d 368 (2013).

The SVP's mental abnormality is established after a full hearing at the initial commitment trial, just as the insanity acquittee's mental condition is established after a full hearing at the initial criminal trial. McCuiston, 174 Wn.2d at 379; State v. Platt, 143 Wn.2d 242, 251 n.4, 19 P.3d 412 (2001), cert. denied, 534 U.S. 870, 122 S. Ct. 161, 151 L. Ed. 2d 110 (2001). And an SVP's mental abnormality, recognized as a verity in determining whether an individual is mentally ill and dangerous at a later date, is considered severe, chronic and in need of long term treatment. McCuiston, 174 Wn.2d at 385, 389-90. Yet substantive due process still requires periodic review of whether a current mental abnormality exists in order to continue to confine the SVP after the initial commitment. Id. at 384-85, 387-88. Due process in the SVP scheme requires a finding of current mental abnormality even though the SVP remains committed.

The due process protection cannot be less for an insanity acquittee on conditional release, especially since the State is seeking to put the person back into confinement instead of merely seeking to keep the person in confinement. Due process requires more than blinkered reliance on the presumption of continued mental illness in the face of substantial evidence that the person whose liberty is at stake no longer suffers from a mental

illness. Trial judges need not turn a blind eye to evidence from the mental hospital that a mental illness no longer exists. Judge Gain was aware that reports from Western State Hospital provided a basis to find Beaver was not currently mentally ill. RP 30-33. He expressed grave reservation about sending Beaver back to Western State Hospital because it was a form of preventative detention. Id. But he felt his hands were tied.

Without a mental illness, involuntary civil commitment constitutes nothing but punishment, which is anathema to any statutory scheme for civil commitment. See In re Pers. Restraint of Young, 122 Wn.2d 1, 21-22, 857 P.2d 989 (1993) ("the civil commitment goals of incapacitation and treatment are distinct from punishment, and have been so regarded historically."). A constitutional commitment scheme does not function as "preventative detention" precisely because a person must be both mentally ill and dangerous to be committed. Young, 122 Wn.2d at 39. Indeed, those who are civilly committed have a constitutional right to treatment to cure or improve their mental condition. D.W., 181 Wn.2d at 208. In Beaver's case, Western State Hospital — the entity responsible for providing constitutionally required treatment — reported that Beaver did not have a mental illness in need of treatment in a confined setting. Yet Beaver was recommitted to Western State Hospital anyway. At that point, the nature of commitment ceases to bear some reasonable relation to the

purpose for which the individual is committed. That is a substantive due process violation. Foucha, 504 U.S. at 79.

That an insanity acquittee bears the burden of proving lack of current mental illness does not extinguish the need for a finding that one exists. The due process point is that a finding on the issue must be made, regardless of which party has the burden of persuasion. In many cases, a finding of continued mental illness will flow directly from the presumption because the acquittee will have produced no contrary evidence on the issue. But in cases such as Beaver's, where Western State Hospital reports that the acquittee is no longer dangerous as a result of mental illness and whatever problems he does have cannot be treated in the hospital setting, due process requires that trial courts have the authority to decline revocation to ensure the reason for civil commitment retains a reasonable relation to the nature of commitment.

Options short of commitment in a mental hospital are available to protect society from individuals who present a danger to the community but who are not dangerous due to mental disease or defect. In many cases, conditions can be heightened to address concerns of dangerousness, such as requiring inpatient treatment for an insanity acquittee whose dangerousness stems from a substance abuse problem. This is precisely what Western State Hospital recommended for Beaver. CP 112, 367-68.

Further, criminal charges can be brought against those who have committed a crime in the community. The resulting punishment of a dangerous person who is not dangerous by reason of mental illness complies with due process. But such a person does not belong in a mental hospital, and substantive due process does not countenance that outcome.

2. PROCEDURAL DUE PROCESS REQUIRES A JUDICIAL FINDING THAT AN INSANITY ACQUITTEE IS DANGEROUS DUE TO MENTAL ILLNESS BEFORE THAT PERSON CAN BE RECOMMITTED TO A MENTAL HOSPITAL.

The Court of Appeals' procedural due process analysis is misplaced. A substantive due process inquiry resolves the question of whether a judicial finding is required before an insanity acquittee can be recommitted to a mental health hospital. In a number of cases, this Court has held due process requires a particular finding without resorting to a procedural due process analysis. *See, e.g., Bao Dinh Dang*, 178 Wn.2d at 870-71, 874, 888; *In re Detention of Thorell*, 149 Wn.2d 724, 731-32, 742-43, 72 P.3d 708 (2003) (finding of dangerousness and mental abnormality required under chapter 71.09 RCW, but not separate finding on lack of volitional control), *cert. denied*, 541 U.S. 990, 124 S. Ct. 2015, 158 L. Ed. 2d 496 (2004); *In re Detention of Harris*, 98 Wn.2d 276, 284-85, 654 P.2d 109 (1982) (finding of recent overt act required under RCW 71.05.020); *Smith v. Whatcom County Dist. Ct.*, 147 Wn.2d 98, 112, 52

P.3d 485 (2002) (finding of willful failure to pay required before person can be jailed for nonpayment).

Assuming a procedural due process analysis is appropriate, the result is the same. The following factors are balanced under the procedural due process test: (1) the private interest affected, (2) the risk of erroneous deprivation of that interest through existing procedures and the probable value, if any, of additional procedural safeguards, and (3) the governmental interest, including costs and administrative burdens of additional procedures. Mathews v. Eldridge, 424 U.S. 319, 334, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976).

The insanity acquittee's interest in liberty is substantial. Addington, 441 U.S. at 425. The risk of erroneous deprivation of that liberty interest is significant in the absence of a finding of current mental illness. Such a revocation procedure does not ensure that individuals who are to be recommitted continue to meet the constitutional standard for commitment, namely dangerousness *and* mental illness. A procedure that does not require the court to find current mental illness is more likely to result in an erroneous deprivation of liberty — recommitment to a mental hospital — at least where substantial evidence exists that rebuts the presumption of continued mental illness.

The Court of Appeals held the risk of erroneous deprivation did not require a finding of mental illness in revocation proceedings because the acquittee still has the option of pursuing unconditional release under RCW 10.77.200. Beaver, 184 Wn. App. at 239, 247-48.

A revoked acquittee, however, loses his liberty interest in being recommitted as part of the revocation procedure before an unconditional release hearing takes place.³ The court has 45 days to order an unconditional release hearing upon receipt of a release petition. RCW 10.77.200(3). That's 45 days of lost liberty, not even taking into account the effect of continuances. The erroneous deprivation of total liberty through recommitment is avoided by requiring a finding of mental illness upfront, as part of the revocation procedure. It is not avoided through a later unconditional release hearing, by which point the damage to liberty is done. The existence of the unconditional release procedure does not exonerate the lack of safeguard in the revocation procedure.

The Court of Appeals complained "Beaver's proposal would effectively turn every revocation hearing into a de novo commitment

³ As a practical matter, an insanity acquittee on conditional release who wants the benefits of supervision and treatment in the community will not seek final discharge because it would deprive him of the benefits that conditional release provides. Beaver, for his part, could not seek unconditional release at the time of the January 2013 revocation hearing because he agreed as part of the July 2011 conditional release order not to seek final discharge for two years. CP 105.

hearing." Beaver, 184 Wn. App. at 249. That is untrue. If the trial court finds no current mental illness at the revocation hearing, then the result is the conditional release cannot be revoked. But the acquittee is not unconditionally released, but rather is still subject to being monitored under approved conditions outside the institutional setting.

Further, the same argument made by the Court of Appeals could be lobbed against requiring a finding of dangerousness in the revocation context. If the Court of Appeals' position were sound, then there would be no due process requirement for a dangerousness finding in the revocation context either because the acquittee always has the option of seeking unconditional release on the basis of lack of dangerousness through a separate statutory procedure. Under Bao Dinh Dang, due process requires a finding of dangerousness as a prerequisite to revocation, regardless of the availability of the unconditional release procedure. Bao Dinh Dang, 178 Wn.2d at 876. The same must hold true for a finding of mental illness.

Finally, the burden on the government to provide for a judicial finding of current mental illness in revocation proceedings is minimal. The Court of Appeals overstates the additional resources needed for that finding. Beaver, 184 Wn. App. at 249-50. Periodic reports on mental illness are generated as a matter of course and are used as part of all revocation hearings. Insanity acquittees are already "entitled to an

"immediate mental examination" before the revocation hearing. RCW 10.77.190(2). "This assures that the trial court has expert information concerning the insanity acquittee's mental health" before deciding whether revoke. State v. Derenoff, 182 Wn. App. 458, 466-67, 332 P.3d 1001 (2014). The evidence upon which to make a mental illness determination is already there and no separate proceeding is required to deal with it. The procedural due process factors favor a judicial finding of current mental illness before an insanity acquittee can be recommitted.

3. RCW 10.77.190(4) IS CAPABLE OF BEING INTERPRETED CONSISTENT WITH DUE PROCESS REQUIREMENTS, BUT IF THIS COURT DETERMINES OTHERWISE, THEN IT IS UNCONSTITUTIONAL.

"[C]ivil commitment statutes are constitutional only when both initial *and continued confinement* are predicated on the individual's mental abnormality and dangerousness." McCustion, 174 Wn.2d at 387 (emphasis added). Whenever possible, courts will read a requirement into a statute, even where it is not explicitly present, to save a statute from constitutional infirmity. Bao Dinh Dang, 178 Wn.2d at 878-80.

RCW 10.77.190 governs hearings on modification and revocation of conditional release. Under RCW 10.77.190(4), "The issue to be determined is whether the conditionally released person did or did not adhere to the terms and conditions of his or her release, or whether the

person presents a threat to public safety." There is no explicit statutory requirement that the court find a current mental illness before revoking conditional release. But it is possible to read such a requirement into the statute when the civil commitment scheme for insanity acquittees is considered as a whole. Treatment of mentally ill individuals is the civil commitment scheme's reason for being.⁴ The statutory mandate to treat the mental illness of those involuntarily confined in state mental hospitals reflects a due process requirement. D.W., 181 Wn.2d at 208.

The statutory scheme provides for a periodic review process. And what is reviewed is not only whether the acquittee is still dangerous. Review encompasses whether the acquittee is still mentally ill. RCW 10.77.140 thus mandates "Each person committed to a hospital or other facility or conditionally released pursuant to this chapter shall have a current examination of his or her mental condition made by one or more experts or professional persons at least once every six months."

Reading the statutory scheme for civil commitment under chapter 10.77 RCW as a whole makes it possible to interpret RCW 10.77.190(4)

⁴ See RCW 10.77.120(1) ("The secretary shall provide adequate care and individualized treatment to persons found criminally insane at one or several of the state institutions or facilities under the direction and control of the secretary"); RCW 10.77.210 ("[a]ny person involuntarily detained, hospitalized, or committed pursuant to the provisions this chapter shall have the right to adequate care and individualized treatment.").

as requiring a finding of mental illness before revocation of conditional release is authorized. A contrary interpretation of RCW 10.77.190(4) undermines why the involuntary commitment scheme exists: to incapacitate and treat those that are dangerously mentally ill. It would make no sense for the legislature to authorize involuntary confinement in a state mental hospital to treat a mental illness where the person does not in fact suffer from mental illness. Statutes must be construed to avoid unlikely, absurd, or strained consequences. City of Seattle v. Fuller, 177 Wn.2d 263, 270, 300 P.3d 340 (2013). If, however, RCW 10.77.190(4) cannot be interpreted to require a finding of mental illness as a prerequisite to revocation, then it violates due process for the reasons set forth above.

D. CONCLUSION

For the reasons stated, this Court should hold due process requires a finding of current mental illness before the conditional release of an insanity acquittee can be revoked.

DATED this 4th day of May 2015

Respectfully Submitted,

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APPENDIX A

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FILED
KING COUNTY WASHINGTON
MAY 21 2014
ANNIE JOHNSON

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

No. 04-1-05852-6 KENT

vs.

RICKEY BEAVER,

Defendant.

ORDER OF DISCHARGE UNDER
RCW 10.77

ORIGINAL

This matter comes before the court pursuant to RCW 10.77.180, which allows for periodic review of a person's conditional release status when a person has been conditionally released following a civil commitment under RCW 10.77 due to a not guilty by reason of insanity determination. By statute, the "sole question to be determined by the court [at a review hearing] is whether the person shall continue to be conditionally released." RCW 10.77.180.

The Court has considered the reports of Western State Hospital dated May 12, 2014 (attached as Ex. 1), and the Public Safety Review Panel, dated May 16, 2014 (attached as Ex. 2), the preponderance of evidence shows that Rickey Beaver no longer suffers from a mental disease or defect. While WSH and the PSRP is of the opinion that Mr. Beaver potentially remains a risk

ORDER OF DISMISSAL - 1

Daniel T. Satterberg, Prosecuting Attorney
SVP Unit
King County Administration Building
300 Fourth Avenue, 9th Floor
Seattle, Washington 98104
(206) 296-0430, FAX (206) 205-8170



1 for reoffending because of his criminal history, personality disorder and history of substance
2 abuse, it is not as a result of a mental disease or defect.

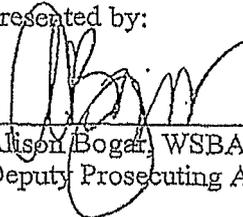
3 Therefore, pursuant to RCW 10.77.200, *State v. Reid*, 144 Wn.2d 621, 30 P.3d 465 (2001)
4 and *State v. Klein*, 156 Wn.2d at 114 (2005) Mr. Beayer should be unconditionally released.

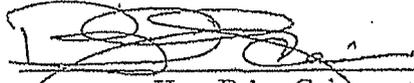
5 ORDER

6 Based on the report of Western State Hospital dated May 12, 2014 (attached as Ex. 1),
7 and the Public Safety Review Panel, dated May 16, 2014 (attached as Ex. 2), IT IS HEREBY
8 ORDERED, ADJUDGED, and DECREED that the defendant, Rickey Beaver is released from
9 further civil commitment under RCW 10.77.

10 DONE IN OPEN COURT this 21 day of May, 2014.

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13 Presented by:

14 
15 _____
Alison Bogat, WSBA# 30380
Deputy Prosecuting Attorney

11 
12 _____
Hon. Brian Gain

BRIAN GAIN

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24 ORDER OF DISMISSAL - 2

Daniel T. Satterberg, Prosecuting Attorney
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(206) 296-0430, FAX (206) 205-8170

Exhibit 1



STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES

WESTERN STATE HOSPITAL

W27-19 * 9601 Steilacoom Blvd. S.W. * Tacoma Wa 98498-7213 * (253) 582-8900

May 12, 2014

Presiding Criminal Judge
King County Superior Court
516 3rd Ave. Room 203
Seattle, WA 98104-2381

RE: BEAVER, Ricky
DOB: 05-25-61

Cause No: 04-1-05852-6 SEA
WSH No: 800134

Your Honor,

Pursuant to R.C.W. 10.77.140, the following is a progress report on Mr. Ricky Beaver. The Risk Review Board (RRB) at Western State Hospital (WSH) met on 3/19/14 to review Mr. Beaver's case. There had also been an extensive examination of the case on 8/28/13.

Brief review of previous treatment and recommendations:

As part of the RRB evaluation of the case that occurred on 3/19/14 we reviewed the previous recommendations of the RRB from 2/29/12. In that assessment we reviewed prior progress notes and recommendations including a letter dated 3/3/11 where the RRB supported a Final Discharge for Mr. Beaver. In summary, this was based on Mr. Beaver having optimally benefited from the services available from WSH. After completing inpatient alcohol and drug treatment in October 2010, Pioneer Center North recommended that he follow-up with outpatient substance abuse treatment. As stated in the letter dated 3/3/11, *Given that Western State Hospital is a locked inpatient psychiatric facility with specialization in treatment regarding symptoms of mental illness as opposed to substance abuse, the question arose as to what benefit Mr. Beaver could derive from further inpatient hospitalization.* Mr. Beaver's progress through hospitalization at that time was reviewed and summarized as follows: *He has shown no signs or symptoms of mental illness that cannot be explained by other means such as inducement by substance abuse or characterological factors.* We later reviewed the letter, dated 4/18/14, from Mr. Beaver's Community Corrections Officer, Thomas McJilton, who stated that, "Mr. Beaver is in compliance with the Court's conditions."

Summary of Treatment Progress:

Mr. Beaver was discharged by WSH on 10/21/13 into the supervision of the Department of Corrections. He remains under the care and control of DSHS until such time as the Court grants his release and final discharge.

Conclusion and Recommendations

As noted in WSH letter to the court dated 3/3/11, *Mr. Beaver has shown no signs or symptoms of mental illness. His presentation does not alter significantly whether or not he is taking*

Presiding Criminal Judge
May 12, 2014

Re: BEAVER, Ricky
Page 2

psychiatric medication. There has been a pattern of his being sent to WSH without accompanying symptoms warranting psychiatric care. He has shown no signs or symptoms of mental illness that cannot be explained by other means such as inducement by substance abuse or characterological factors.

Subsequent reviews of this case by the RRB on the abovementioned dates resulted in the same opinion. Although the RRB recognizes that Mr. Beaver is diagnosed with personality disorders, according to his clinical history and available reports, he does not suffer from a mental disease or defect outside of his historical and volitional substance abuse. He is in compliance with recommendations and treatment for his substance abuse according to the most recent DOC report to the RRB.

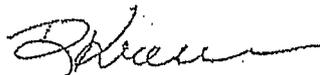
The RRB members acknowledge that Mr. Beaver potentially remains a risk for re-offending based on his personality disorder diagnoses, particularly in combination with his historical substance abuse. However, this would not be as the result of a mental disease or defect, and at this time he is in compliance with his outpatient treatment. Should he relapse to using substances, Mr. Beaver could adequately be treated in a non-psychiatric inpatient setting, such as a community chemical dependency treatment program.

Under RCW 10.77.200(3), a person may be released from an NGRI commitment if he or she "no longer presents, as a result of a mental disease or defect, a substantial danger to other persons, or a substantial likelihood of committing criminal acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions."

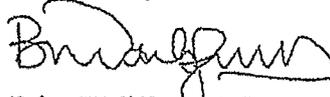
Therefore, the RRB supports the Final Discharge of Mr. Beaver from his NGRI commitment, as he no longer presents, *as a result of a mental disease or defect*, a substantial danger to other persons, or a substantial likelihood of committing criminal acts jeopardizing public safety or security.

If you have any questions regarding this case please contact the first undersigned at your convenience.

Respectfully Submitted,



Roberta Kresse, M.Ed.
Coordinator, Risk Review Board



Brian Waiblinger, MD
Chair, Risk Review Board



Ronald M. Adler
Chief Executive Officer

Presiding Criminal Judge
May 12, 2014

Re: BEAVER, Ricky
Page 3

Western State Hospital

Cc: Rickey Beaver
Alison Bogar, Senior Prosecutor
Catherine Elliott, Defense Counsel

Exhibit 2

PUBLIC SAFETY REVIEW PANEL

Washington State

May 16, 2014

Assistant Secretary Jane Beyer
Aging and Disability Services
Behavioral Health and Service Integration
P.O. Box 45050
Olympia, Washington 98504-5050

RE: Rickey Beaver
Hospital ID Number: 800134
DOB: 05/25/61
Cause No: 04-1-05852-6

Dear Assistant Secretary Beyer:

I am writing on behalf of the Public Safety Review Panel (PSRP) to inform you of the findings, conclusions, and recommendations of the PSRP regarding Western State Hospital's (WSH) recommendation to discharge Rickey Beaver under RCW 10.77.200(3) as he no longer presents, as a result of a mental disease or defect, a substantial danger to other persons, or a substantial likelihood of committing criminal acts jeopardizing public safety or security.

As you are aware, the PSRP convenes regularly to fulfill its statutory responsibility under RCW 10.77.270 to make independent assessments of the public safety risk entailed by the all recommendations to the Secretary, decisions by the Secretary, or actions pending in court concerning patients Not Guilty by Reason of Insanity (NGRI) who is currently under the civil commitment jurisdiction of a Washington Superior Court or persons committed under the involuntary treatment act where the court has made a special finding under RCW 7.05.280 (3) (b). The PSRP provides a written assessment of risk for each recommendation to the Secretary and, through his office, to the court, the prosecutor, and the patient's defense attorney. The report of the PSRP's assessment may be primarily informative, that is, without a definitive conclusion regarding the advisability of the recommendation. The report is more likely to indicate whether the PSRP is in agreement with the Hospital's recommendation and supports it, or whether the PSRP disagrees with the recommendation and does not support it. The report may contain a recommendation originating from the PSRP that differs from the Hospital's recommendation. Recommendations from the PSRP may or may not be informed by additional evaluations of the committed person performed by the PSRP.

Background:

Mr. Beaver was committed to WSH in December 2005 by the King County Superior Court after he was found not guilty by reason of insanity (NGRI) of the charge of Residential Burglary. After spending the night smoking crack cocaine, Mr. Beaver broke into a house with the intent to steal money to buy more cocaine. The homeowners returned and Mr. Beaver fled through a rear window. When police attempted to apprehend Mr. Beaver he did not comply and was tased. According to the police report Mr. Beaver continued to try and escape and had to be tased several times before he finally complied.

PSRP Decision:

On 5/15/14 the PSRP met to review this case. There was a quorum of members present. The PSRP decided unanimously to support the discharge of Mr. Beaver under RCW 10.77.200(3) as he no longer presents, as a result of a mental disease or defect, a substantial danger to other persons, or a substantial likelihood of committing criminal acts jeopardizing public safety or security.

Assessment of Submission and Recommendation:

The WSH RRB concluded that Mr. Beaver potentially remains a risk for re-offending because of his criminal history, personality disorder, and history of substance abuse, but no longer poses a criminal risk as result of a mental disease or defect. WSH has carefully documented the history and clinical data that are the basis of the RRB's conclusions. Therefore, the PSRP supports the hospital's recommendation that Mr. Beaver be discharged.

Again, the PSRP supports the discharge of Mr. Beaver.

Thank you for your consideration of the PSRP's assessment of the Hospital's submission, and of the PSRP's advice and recommendations. The PSRP also appreciates your office's contribution, as part of the Department's administrative support of the PSRP, of distributing copies of this review summary letter to all entities listed as recipients of PSRP reviews in RCW 10.77.150.

Respectfully Submitted,



Henry Richards, PhD, PSRP Chair

CC: Through the Office of the Assistant Secretary: Court of Jurisdiction
and other entities specified in RCW 10.77.150
Ron Adler, CEO Western State Hospital
Nadine Fredrickson, WSH PSRP Liaison
Sjan Talbot, MA, PSRP Executive Director

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON

Respondent,

vs.

RICKEY BEAVER,

Petitioner.

)
)
) NO. 91112-6
)
)
)
)
)

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 4TH DAY OF MAY, 2015, I CAUSED A TRUE AND CORRECT COPY OF THE SUPPLEMENTAL BRIEF OF PTITIONER RICKEY BEAVER TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] RICKEY BEAVER
630 MOSES LANE SOUTH APT. B
RENTON, WA 98057

SIGNED IN SEATTLE WASHINGTON, THIS 4TH DAY OF MAY, 2015.

x Patrick Mayovsky

OFFICE RECEPTIONIST, CLERK

To: Patrick Mayovsky
Cc: PAOAppellateUnitMail@Kingcounty.gov; alison.bogar@kingcounty.gov;
Andrea.Vitalich@kingcounty.gov
Subject: RE: State v. Rickey Beaver, No. 91112-6 / Supplemental Brief of Petitioner

Received 5-5-2015

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: Patrick Mayovsky [mailto:MayovskyP@nwattorney.net]
Sent: Monday, May 04, 2015 5:00 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: PAOAppellateUnitMail@Kingcounty.gov; alison.bogar@kingcounty.gov; Andrea.Vitalich@kingcounty.gov
Subject: State v. Rickey Beaver, No. 91112-6 / Supplemental Brief of Petitioner

Attached for filing today is a supplemental brief of petitioner for the case referenced below.

State v. Rickey Beaver

No. 91112-6

Supplemental Brief of Petitioner

Filed By:
Casey Grannis
206.623.2373
WSBA No. 37301
grannisc@nwattorney.net