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June 30, 2016

Court of Appeals  
Division III  
State of Washington

No. 33810-0-III

COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

vs.

**Charles Fletcher,**

Appellant.

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Spokane County Superior Court Cause No. 11-1-02625-7

The Honorable Judge Salvatore Cozza

**Appellant's Reply Brief**

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**TABLE OF CONTENTS**

**TABLE OF CONTENTS ..... i**

**TABLE OF AUTHORITIES ..... ii**

**ARGUMENT..... 4**

**I. The trial judge violated Mr. Fletcher’s statutory right to counsel and failed to comply with the requirements of RCW 10.77.200..... 4**

A. The plain language of RCW 10.77.020(1) requires appointment of counsel. .... 4

B. The trial court should have scheduled a hearing and directed the secretary to develop a recommendation. .... 9

**II. The parties agree that appellate costs should not be awarded..... 9**

**CONCLUSION ..... 9**

## TABLE OF AUTHORITIES

### WASHINGTON STATE CASES

<i>In re Dependency of E.H.</i> , 158 Wn. App. 757, 243 P.3d 160 (2010) .....	5
<i>In re Det. of Kistenmacher</i> , 163 Wn.2d 166, 178 P.3d 949 (2008) .....	4, 7
<i>In re Grove</i> , 127 Wn.2d 221, 897 P.2d 1252 (1995) .....	4
<i>In re Petersen</i> , 138 Wn.2d 70, 980 P.2d 1204 (1999) .....	8
<i>Lindeman v. Kelso Sch. Dist. No. 458</i> , 162 Wn.2d 196, 172 P.3d 329 (2007).....	6
<i>Linth v. Gay</i> , 190 Wn.App. 331, 360 P.3d 844 (2015) .....	5
<i>State v. Christensen</i> , 153 Wn.2d 186, 102 P.3d 789 (2004) .....	6
<i>State v. Davis</i> , 160 Wn. App. 471, 248 P.3d 121 (2011).....	6
<i>State v. Delgado</i> , 148 Wn.2d 723, 63 P.3d 792 (2003) .....	6
<i>State v. Engel</i> , 166 Wn.2d 572, 210 P.3d 1007 (2009).....	6
<i>State v. Jones</i> , 185 Wn.2d 412, --- P.3d --- (2016).....	8
<i>State v. Lilyblad</i> , 163 Wn.2d 1, 177 P.3d 686 (2008).....	6, 7
<i>State v. Punsalan</i> , 156 Wn.2d 875, 133 P.3d 934 (2006) .....	6
<i>State v. Rafay</i> , 167 Wn.2d 644, 222 P.3d 86 (2009), <i>as corrected</i> (Dec. 8, 2010) .....	8
<i>State v. Williams</i> , 171 Wn.2d 474, 251 P.3d 877 (2011).....	6

### WASHINGTON STATUTES

RCW 10.77.020 .....	4, 5, 7, 8
RCW 10.77.200 .....	4

RCW 13.34.090 ..... 4  
RCW 71.09.050 ..... 4, 8  
RCW 71.09.090 ..... 5, 8

**OTHER AUTHORITIES**

*Dictionary.com*..... 6

## ARGUMENT

### **I. THE TRIAL JUDGE VIOLATED MR. FLETCHER’S STATUTORY RIGHT TO COUNSEL AND FAILED TO COMPLY WITH THE REQUIREMENTS OF RCW 10.77.200.**

- A. The plain language of RCW 10.77.020(1) requires appointment of counsel.

Under RCW 10.77.020(1), an indigent person detained pursuant to an insanity acquittal is entitled to the appointment of counsel at “*any and all stages* of the proceedings.” RCW 10.77.020(1) (emphasis added). This broad language suggests that the provision is to be liberally interpreted.

Indeed, the provision is arguably broader than that used in RCW 71.09.050 (“[a]t all stages of the proceedings under this chapter”), which has been interpreted to create a right to the assistance of counsel at pre-commitment examinations under RCW 71.09. *In re Det. of Kistenmacher*, 163 Wn.2d 166, 173, 178 P.3d 949 (2008).

Similarly, RCW 10.77020(1) is arguably broader than the language used in RCW 13.34.090 (securing the right to counsel “in all proceedings under this chapter” and “[a]t all stages of a proceeding in which a child is alleged to be dependent.”) The latter provision has been interpreted to require appointment of counsel for matters beyond dependency and termination trials. *See In re Grove*, 127 Wn.2d 221, 241, 897 P.2d 1252 (1995) (right to appointed counsel on appeal); *In re Dependency of E.H.*,

158 Wn. App. 757, 768, 243 P.3d 160 (2010) (right to appointed counsel for nonparental custody action proceeding concurrently with dependency).

Mr. Fletcher has filed a pro se pleading seeking conditional release (and the appointment of counsel). CP 10-11. He is entitled to counsel because this is a “stage of the proceedings” under RCW 10.77. RCW 10.77.020(1). The trial court erred refusing to consider the appointment of counsel. CP 6.

Without citation to authority, Respondent argues that the trial judge’s decision to postpone appointment of counsel “makes sense.” Brief of Respondent, p. 4. Where no authority is cited, courts presume that counsel has found none after diligent search. *Linth v. Gay*, 190 Wn.App. 331, 339 n. 5, 360 P.3d 844 (2015). Also unsupported is Respondent’s assertion that it “would appear to be absurd” to interpret the statute to provide a right to counsel “the entire time he or she is committed.” Brief of Respondent, p. 5.

In fact, RCW 10.77.020(1) should be interpreted to provide a right to counsel the entire time a person is committed pursuant to RCW 10.77.<sup>1</sup> In interpreting a statute, the court’s duty is to “discern and implement the

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<sup>1</sup> This would parallel the right to counsel in civil commitment cases under RCW 71.09. Attorneys continue to represent their clients year round, even after commitment, working hardest during the months leading up to each annual review show cause hearing under RCW 71.09.090.

legislature’s intent.” *State v. Williams*, 171 Wn.2d 474, 477, 251 P.3d 877 (2011). The court’s inquiry “always begins with the plain language of the statute.” *State v. Christensen*, 153 Wn.2d 186, 194, 102 P.3d 789 (2004).

Where the language of a statute is clear, legislative intent is derived from the language of the statute alone. *State v. Engel*, 166 Wn.2d 572, 578, 210 P.3d 1007 (2009); *see also State v. Punsalan*, 156 Wn.2d 875, 879, 133 P.3d 934 (2006) (“Plain language does not require construction.”). A court “will not engage in judicial interpretation of an unambiguous statute.” *State v. Davis*, 160 Wn. App. 471, 477, 248 P.3d 121 (2011). Nor may a reviewing court “add words or clauses to an unambiguous statute when the legislature has chosen not to include that language.” *State v. Delgado*, 148 Wn.2d 723, 727, 63 P.3d 792 (2003).

Absent evidence of a contrary intent, words in a statute must be given their plain and ordinary meaning. *State v. Lilyblad*, 163 Wn.2d 1, 6, 177 P.3d 686 (2008). The meaning of an undefined word or phrase may be derived from a dictionary. *Lindeman v. Kelso Sch. Dist. No. 458*, 162 Wn.2d 196, 202, 172 P.3d 329 (2007).

The word “any” includes among its meanings “every; all.” *Dictionary.com Unabridged*, Random House, Inc.<sup>2</sup> The word “all” means, *inter alia*, “the whole number of; ...the greatest possible; ... every; ... any;

<sup>2</sup> Available at <http://www.dictionary.com/browse/any> (last accessed June 30, 2016.)

any whatever.” *Dictionary.com*.<sup>3</sup> The word “stage” means (among other things) “a single step... in a process; a particular phase... in a process.” *Dictionary.com*.<sup>4</sup> The word “proceedings” can mean “a series of activities or events; happenings.” *Dictionary.com*.<sup>5</sup>

The language here is plain and unambiguous. Mr. Fletcher has a right to counsel at “any and all stages of the proceedings.” RCW 10.77.020(1). This establishes the legislature’s intent to create a right to counsel at every single step outlined in RCW 10.77.

Respondent erroneously focuses on the legal definition of “proceedings,” and even looks to statutory definitions of “legal proceedings.” Brief of Respondent, pp. 6-7, 9. But the legislature did not limit the right to counsel to legal proceedings; accordingly, the ordinary meaning of “proceedings” applies. *Lilyblad*, 163 Wn.2d at 6. This is consistent with the Supreme Court’s interpretation of the word “proceedings” in *Kistenmacher*, 163 Wn.2d at 171-173. The *Kistenmacher* court found the word “proceedings” broad enough to encompass the pre-

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<sup>3</sup> Available at <http://www.dictionary.com/browse/all> (last accessed June 30, 2016).

<sup>4</sup> Available at <http://www.dictionary.com/browse/stage> (last accessed June 30, 2016).

<sup>5</sup> Available at <http://www.dictionary.com/browse/proceeding> (last accessed June 30, 2016).

commitment psychological examination, rather than limiting it to mean no more than court hearings. *Id.*<sup>6</sup>

Respondent similarly errs by attempting to limit the word “stages” to mean “critical stages.” Brief of Respondent, p. 8. But the legislature provided a statutory right to counsel at “any and all stages” of the proceedings. RCW 10.77.020(1). It did not limit the right to “critical stages” where the constitutional rights to counsel and to be present attach. *See State v. Rafay*, 167 Wn.2d 644, 652, 222 P.3d 86 (2009), *as corrected* (Dec. 8, 2010) (right to counsel); *State v. Jones*, 185 Wn.2d 412, \_\_\_, --- P.3d --- (2016) (right to be present).

The legislature has decreed that a person found not guilty by reason of insanity must be provided counsel at “any and all stages of the proceedings.” RCW 10.77.020(1). Mr. Fletcher was entitled to counsel when he sought conditional release. The trial court’s decision must be reversed and the case remanded for appointment of counsel.

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<sup>6</sup> In the context of RCW 71.09 matters, an additional right to counsel explicitly attaches to the show cause hearing. RCW 71.09.090(2). The Supreme Court has read this to mean that the right to counsel secured by RCW 71.09.050 applies only prior to commitment, since any other interpretation would render RCW 71.09.090(2) superfluous. *In re Petersen*, 138 Wn.2d 70, 92, 980 P.2d 1204 (1999). This limitation does not apply to RCW 10.77.020(1); no other provision in RCW 10.77 secures the right to counsel.

- B. The trial court should have scheduled a hearing and directed the secretary to develop a recommendation.

Mr. Fletcher rests on the argument set forth in his opening brief.

**II. THE PARTIES AGREE THAT APPELLATE COSTS SHOULD NOT BE AWARDED.**

In light of Respondent's agreement, no further argument is provided. *See* Brief of Respondent, pp. 14-15.

**CONCLUSION**

The trial court's decision must be reversed, and the case remanded for appointment of counsel and a hearing on the issue of Mr. Fletcher's request for conditional release.

Respectfully submitted on June 30, 2016,

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CERTIFICATE OF SERVICE

I certify that on today's date:

I mailed a copy of Appellant's Reply Brief, postage prepaid, to:

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With the permission of the recipient(s), I delivered an electronic version of the brief, using the Court's filing portal, to:

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I filed the Appellant's Reply Brief electronically with the Court of Appeals, Division III, through the Court's online filing system.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on June 30, 2016.



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