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SUPREME COURT  
STATE OF WASHINGTON  
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BY SUSAN L. CARLSON  
CLERK

No. 96143-3

THE SUPREME COURT  
FOR THE STATE OF WASHINGTON

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STATE OF WASHINGTON, Respondent,

v.

D.L., Appellant.

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

STATE OF WASHINGTON'S  
SUPPLEMENTAL BRIEF ON MOOTNESS

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## INTRODUCTION

“If a court can no longer provide effective relief, then the case is basically moot.” State v. Cruz, 189 Wn.2d 588, 597, 404 P.3d 70 (2017). On August 30, 2017, Whatcom County Superior Court Commissioner Alfred Heydrich sentenced Respondent D.L. to 36 to 40 weeks commitment at the Echo Glen Children’s Center. Respondent completed his sentence and was released on April 28, 2018. Because this Court can no longer provide effective relief, Respondent D.L.’s appeal from his sentence is moot. The State of Washington respectfully requests the Court to dismiss his request for review.

### I. ISSUE PRESENTED

D.L.’s motion for discretionary review presents one issue:

A. This Court will accept review of a moot case only if “it involves matters of continuing and substantial public interest.” State v. Hunley, 175 Wn.2d 901, 906, 287 P.3d 584 (2012). The Commissioner imposed a manifest injustice sentence after applying settled law to a unique set of facts. Does D.L.’s completed sentence merit further review?

## II. STATEMENT OF FACTS

D.L.'s Disposition Order imposed a straightforward sentence. (Disposition Order; CP 208). He would serve between 36 to 40 weeks in a Juvenile Rehabilitation Administration facility with credit for 10 days served. (Disposition Order ¶ 3.7; CP 210). There was no community supervision to follow. (Disposition Order ¶ 3.4; CP 210).

On September 11, 2017, D.L. appealed, and nine months later, the Court of Appeals affirmed his sentence in an unpublished opinion. State v. D.L., No. 77360, slip op. (June 25, 2018). Two months earlier, on April 28, 2018, Respondent finished his commitment to Echo Glen and returned to Whatcom County. He satisfied his Disposition Order with no complications.

On July 24, 2018, D.L. filed his petition for review with this Court. The Clerk noted that D.L. should have filed a motion for discretionary review, and on September 6, 2018, the Commissioner held oral argument on D.L.'s motion. As a result of that hearing, the Commissioner requested supplemental briefing on whether this case is now moot.

## ARGUMENT

### III. STANDARD OF REVIEW

This Court reviews a case for mootness de novo. State v. Cruz, 189 Wn.2d 588, 593, 404 P.3d 70 (2017) (“at oral argument, the parties addressed a possible mootness issue raised by this court”).

### IV. NO COMPELLING REASON EXISTS TO EXERCISE REVIEW

#### A. There Is No Continuing Case Or Controversy

D.L. has served his commitment at Echo Glen and apparently benefitted from the counseling and structure there. That was why the Probation Department recommended a manifest injustice sentence. (VRP 214) (testimony of Probation Counselor Linda Barry); (VRP 219) (testimony of Probation Counselor Kelly Dahl). And D.L. has completed all obligations arising from the Disposition Order.

Because his juvenile case is over and closed, his appeal presents only hypothetical issues that call for an advisory opinion.

We defined a justiciable controversy as (1) an actual, present and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement, (2) between parties having genuine and opposing interests, (3) which involves interests that must be direct and substantial, rather than potential,

theoretical, abstract or academic, and (4) a judicial determination of which will be final and conclusive. Inherent in these four requirements are the traditional limiting doctrines of standing, mootness, and ripeness, as well as the federal case-or-controversy requirement. In sum, the four justiciability factors must “coalesce” to ensure that the court will be rendering a final judgment on an actual dispute between opposing parties with a genuine stake in the resolution.

To-Ro Trade Shows v. Collins, 144 Wn.2d 403, 411, 27 P.3d 1149 (2001) (citations omitted).

For good reason, this Court refuses to decide moot cases.

Decisions of moot cases with limited fact situations provide little guidance to other public officials. The use of the public interest exception in the present moot case is not justified under the factors in Sorenson, and we decline to invoke the exception on these limited facts to issue an essentially advisory opinion.

Hart v. Dep't of Soc. & Health Servs., 111 Wn.2d 445, 451, 759 P.2d 1206 (1988).

B. D.L.'s Sentence Is Not A Matter Of Continuing And Substantial Public Interest.

Exercising his discretion, Commissioner Heydrich decided that Respondent would benefit from additional therapeutic time at Echo Glen. The Court of Appeals in its unpublished opinion upheld the Commissioner's decision.

We find that due process was satisfied here. When [D.L.] pleaded guilty, the parties believed that he

would be participating in the SSODA program. [D.L.] did not participate in the SSODA evaluation, and thus was deemed ineligible for the program. When [D.L.] was deemed ineligible for the SSODA program, the matter moved to sentencing. After reviewing [D.L.]'s failure to cooperate in the SSODA program, the probation department decided to recommend a manifest injustice sentence. [D.L.] was given notice of the recommendation adequate to prepare to respond at sentencing. We hold that [D.L.] was not denied his due process rights.

State v. D.L., No. 77360-7, slip op. at 6 (June 25, 2018).

This Court in Sorenson v. City of Bellingham, 80 Wn.2d 547, 496 P.2d 512 (1972) adopted a narrow exception to mootness, allowing this Court to reach the merits of particularly compelling cases.

The Supreme Court may, in its discretion, retain and decide an appeal which has otherwise become moot when it can be said that matters of continuing and substantial public interest are involved. Criteria to be considered in determining the requisite degree of public interest are the public or private nature of the question presented, the desirability of an authoritative determination for the future guidance of public officers, and the likelihood of future recurrence of the question. This exception to the general rule obtains only where the real merits of the controversy are unsettled and a continuing question of great public importance exists.

Sorenson, 80 Wn.2d at 558 (citations omitted).

Subsequent cases have emphasized the limits of this exception.

The increased use of the exception threatens to swallow the basic rule of not issuing decisions in moot cases. Actual application of the Sorenson criteria to each case where the exception is urged is necessary to ensure that an actual benefit to the public interest in reviewing a moot case outweighs the harm from an essentially advisory opinion.

Hart, 111 Wn.2d at 450.

D.L.'s case does not satisfy the Sorenson criteria. First, this is a private dispute related to the length of D.L.'s commitment to Echo Glen. And unique circumstances – his failure to cooperate with SSODA evaluators – led to the manifest injustice sentence. This is not a case involving public issues or unsettled law.

Second, a decision from this Court will not provide public officials with guidance beyond what already exists. The juvenile court has discretion to enter a manifest injustice sentence subject to appellate review. Because each sentence involves a unique set of facts, this Court's review will decide only the facts of this case, with limited application elsewhere.

And third, it is highly unlikely this set of facts will reoccur. D.L. failed to qualify for a SSODA based on his personal rejection of the evaluation. Other juveniles will have equally unique reactions to the SSODA process. The important point, which the Court of Appeals affirmed, is that the Commissioner correctly

integrated this information into his Disposition Order. There are no compelling reasons to further review the Commissioner's decision.

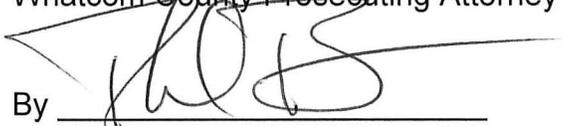
### CONCLUSION

Washington courts require actual controversies to make appropriate decisions. When they decide moot cases and reach for issues that have no practical bearing on the parties, courts offer advice rather than legal rulings.

The State of Washington respectfully requests this Court to dismiss this motion for discretionary review as moot.

DATED this 5 day of October, 2018.

DAVID S. McEACHRAN  
Whatcom County Prosecuting Attorney

By 

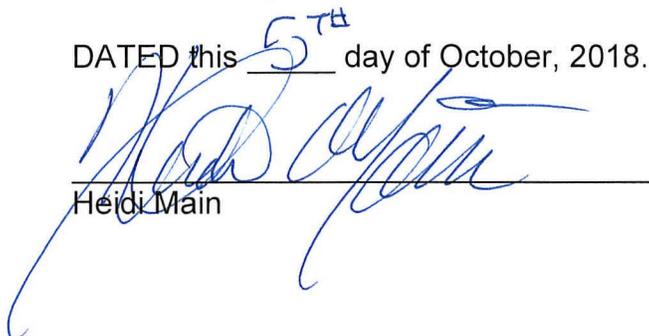
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**DECLARATION OF SERVICE**

The undersigned declares under penalty of perjury under the laws of the State of Washington, that on the date stated below, I mailed or caused delivery of **Answer to Motion for Discretionary Review** to:

Washington Appellate Project  
Attn: Kate Benward  
1511 Third Ave., Ste. 701  
Seattle, WA 98101

DATED this 5<sup>th</sup> day of October, 2018.

  
\_\_\_\_\_  
Heidi Main

**BURI FUNSTON MUMFORD, PLLC**

**October 05, 2018 - 9:28 AM**

**Transmittal Information**

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