

68663-1

68663-1

COA No. 68663-1-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON

Respondent,

v.

DONALD HAYDEN,
Appellant

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2013 APR -9 AM 11:14

STATE'S RESPONSE BRIEF

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ORIGINAL

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I. INTRODUCTION

The State submits this brief in order to clarify the record before the court.

Donald Hayden was found Not Guilty by Reason of Insanity of Assault with a Deadly Weapon in the First Degree on November 14, 1977, under King County Cause No. 83100. The court has lifetime jurisdiction under that cause number. Mr. Hayden was committed to inpatient treatment at Western State Hospital under this cause number in October 2003 and has remained there since.

On November 22, 2011, the Attorney General filed a motion to intervene and forcibly medicate Mr. Hayden. On April 19, 2012, after several long hearings extending over a period of months, the court issued an order authorizing Western State Hospital to forcibly medicate Mr. Hayden.

However, all of the documents submitted by the AAG were filed under King County Cause Number 84-1-01573-6. This cause number relates to Mr. Hayden's 1984 conviction taking a motor vehicle without permission. It is not an NGRI case. No one noticed the error.

The Appellant now claims the April 19, 2012 order should be vacated because the cause number on the order is incorrect. Although the AG's paperwork should have referenced King County Cause No. 83100,

the record shows that the trial court believed the proceedings related to the Appellant's NGRI civil commitment and issued its order under the statutory authority of RCW 10.77.

The court has the inherent authority to correct the cause number and dismiss the appeal should it consider the AG's reference to cause number 84-1-01573-6 instead of 83100 a clerical error.

II. FACTS

Donald Hayden was found Not Guilty by Reason of Insanity of Assault with a Deadly Weapon in the First Degree on November 14, 1977 under King County Cause No. 83100. Supp. CP ____ (Sup# 1 (83100), Order Finding Defendant Not Guilty By Reason of Insanity and Conditionally Releasing). His maximum sentence for that charge is life. *See*, Court of Appeal opinion filed August 8, 2005 and attached hereto as Appendix A.

While on conditional release under King County Cause No. 83100, Mr. Hayden was charged with Robbery in the Second Degree and Taking a Vehicle Without Permission, under King County Cause No. 84-1-01573-6. CP 1-3. Hayden pleaded guilty to the charge, received a five year suspended sentence and was placed on probation. CP 4-11. His NGRI conditional release was revoked pursuant to RCW 10.77.190 and he was

returned to WSH. Supp. CP ____ (Sup# 10 (83100), Findings, Conclusions and Order Revoking Release).

Mr. Hayden was conditionally released and returned to Western State Hospital (WSH) numerous times as part of the civil commitment proceedings under King County Cause No. 83100. His last conditional release was revoked on September 29, 2003. Supp. CP ____ (Sup# 139 (83100), Order Revoking Conditional Release and Commitment). Mr. Hayden has remained inpatient at WSH since.

The Honorable Judge Wesley Saint Clair was assigned to Mr. Hayden's NGRI civil commitment proceedings in 2004. 1 VRP at 32. He presided over the Appellant's Motion for Conditional Release in 2005, 2006, 2007, 2008, 2009 and 2010, all of which he denied. Supp. CP ____ (Sup#160 (83100), Order Denying Release); Supp. CP ____ (Sup#163 (83100), Order Denying Release); Supp. CP ____ (Sup#171 (83100), Order Denying Release); Supp. CP ____ (Sup#181 (83100), Order Denying Release); Supp. CP ____ (Sup#190 (83100), Order Denying Release); Supp. CP ____ (Sup#198 (83100), Order Denying Release).

On November 22, 2011, the Attorney General filed a motion to intervene and a petition to forcibly medicate the appellant because Mr. Hayden had become physically abusive. CP 12-16, 45-88. The AG's motion referenced Mr. Hayden's NGRI civil commitment, but the AG

inexplicably filed it under King County Cause No. 84-1-01573-6. This was the cause number for Mr. Hayden's 1984 TMV conviction not his 1977 NGRI. CP1-11. Mr. Hayden did not enter a plea of "Not Guilty by Reason of Insanity" in the 84-1-01573-6 case. CP 4-11. He pleaded guilty to one count of Taking a Motor Vehicle Without Permission, for which the statutory maximum is five years. CP 9.

Both the State and the Appellant challenged the court's authority to allow the AG to intervene on behalf of Western State Hospital. Both parties argued that the court lacked subject matter jurisdiction to grant the order. See, State's Brief Opposing filed on December 27, 2011, attached as Appendix B, CP17-23. The State filed its brief in opposition under King County Cause No 83100, the correct civil commitment cause number. See, Appendix B. The Appellant, however, did not. CP 17-23.

The Appellant's brief did reference his civil commitment pursuant to his 1977 NGRI and cited RCW 10.77. CP 17-23. Although the Appellant filed his brief under the 84-1-01573-6 cause number, the brief did not reference his 1984 conviction. *Id.*

The AG's motion to intervene was heard on January 5, 2012. 1 VRP. The AG argued that the court had subject matter jurisdiction referencing the Appellant's 1977 NGRI, the court's ongoing jurisdiction pursuant to RCW 10.77. 1 VRP 5-10. The Deputy Prosecutor and the

Appellant focused the court's attention on what it is statutorily authorized to do under RCW 10.77 once a defendant has been found not guilty by reason of insanity. 1 VRP 10-14, 23-27.

The court held that it had jurisdiction to grant the AG's motion to intervene and order that Mr. Hayden be forcibly medicate under RCW 10.77. CP 97-100. In its oral ruling, the trial court referenced the Appellant's status of having been found not guilty by reason of insanity. The court also commented on its past interactions with the Appellant in this capacity. 1 VRP 37.

The evidentiary hearings relating to Western State Hospital's desire to forcibly medicate Mr. Hayden were held on March 9, 2012 (2 VRP) and April 19, 2012 (4 VRP). The State did not take part in those proceedings. The verbatim report of proceedings indicate that the Appellant's NGRI status under RCW 10.77 was discussed at length throughout the each hearing. The court noted that the Appellant's NGRI status had been ongoing for over 32 years. But, no one questioned his NGRI status under 1984 cause number. 4 VRP 239.

On April 19, 2012, the court signed the AG's Order Authorizing the Department of Social and Health Services to Involuntarily Treat Defendant with Antipsychotic Medication. CP 31-35. The parties and the court discussed numerous findings of fact on the record regarding the

Appellant's treatment at Western State Hospital and his NGRI status. CP 31-35.

On May 1, 2012, the newly enacted RCW 10.77.094 came into effect. Under this legislative fix, the statute authorizes Western State Hospital to administer antipsychotic medication without consent from the court. The statute provides:

(1) A state hospital may administer antipsychotic medication without consent to an individual who is committed under this chapter as criminally insane by following the same procedures applicable to the administration of antipsychotic medication without consent to a civilly committed patient under RCW 71.05.217, except for the following:

(a) The maximum period during which the court may authorize the administration of medication without consent under a single involuntary medication petition shall be the time remaining on the individual's current order of commitment or one hundred eighty days, whichever is shorter; and

(b) A petition for involuntary medication may be filed in either the superior court of the county that ordered the commitment or the superior court of the county in which the individual is receiving treatment, provided that a copy of any order that is entered must be provided to the superior court of the county that ordered the commitment following the hearing. The superior court of the county of commitment shall retain exclusive jurisdiction over all hearings concerning the release of the patient.

(2) The state has a compelling interest in providing antipsychotic medication to a patient who has been committed as criminally insane when refusal of antipsychotic medication would result in a likelihood of serious harm or substantial deterioration or substantially prolong the length of involuntary commitment

and there is no less intrusive course of treatment than medication that is in the best interest of the patient.

RCW 10.77.094.

This appeal followed even though RCW 10.77.094 rendered any issues regarding subject matter jurisdiction entirely moot on appeal.

III. LEGAL ARGUMENT

A. The Court has the Inherent Authority to Correct the Attorney General's Clerical Error and Dismiss the Appeal.

An appellate court has inherent power to correct a clerical error in order to make the true action of the court conform to the record. *Callihan v. Dep't of Labor and Indus.*, 10 Wn. App. 153, 156-157, 516 P.2d 1073 (1973). The power may even be exercised when the trial court's jurisdiction has expired. *Id.* The rule exists to insure that substance shall not give way to form. *Id.*

A "clerical error" is a mechanical mistake. *Marchel v. Bungler*, 13 Wn. App. 81, 84, 533 P.2d 406 (1975). The test to determine whether an error is a clerical error, subject to court correction, is whether based on the record, the judgment or order embodies the trial court's intention. *Id.* Were the rule otherwise, the court of appeals would be required to treat an obvious clerical error as if it were no error at all. *Callihan v. Dep't of Labor and Indus.*, 10 Wn. App. 153, 156-157, 516 P.2d 1073 (1973).

It is clear from the record that the trial court believed its order to forcibly medicate the Appellant was authorized under the statutory authority of RCW 10.77. Throughout the entire proceedings, the parties and the court reference nothing but the Appellant's civil commitment and the statutory authority of RCW 10.77.

In contrast, no one ever referenced the Appellant's 1984 conviction for taking a motor vehicle during any one day of the multiple hearings.

Since being assigned to the Appellant's NGRI case in 2004, Judge Saint Clair never presided over an action related to Appellant's 1984 TMV or King County Cause No. 84-1-0573-6. CP 1-11, 43. He presided over six of Appellant's Motions for Conditional release under King County Cause No. 83100.

Based on this record, this court could deem the use of Cause No. 84-1-01573-6 a clerical error and correct the order to reflect 1-83100 SEA.

While the error here is sloppy, it should not invalidate the lengthy proceedings and the resulting order. To treat this error as if it were no error at all it would allow substance to give way to form. That would empower the Appellant to erroneously claim he was forcibly medicated by Western State Hospital without a court order when in fact the trial court had, and continues to have jurisdiction, under King County Cause No. 83100.

The Appellant's hands are not clean either. He participated in the proceedings and he knew the proceedings related to his 1977 NGRI civil commitment under RCW 10.77. Not only did he fail to notice that the AG used the wrong cause number, the Appellant actually perpetuated the clerical error. He submitted all his briefing under the wrong cause number. CP 17-30.

Had anyone noticed the pleadings were filed under the wrong cause number, the trial court would have had the authority to correct it. *SCM Group USA, Inc. v. Protek Mach. Co.*, 136 Wn. App. 569, 150 P.3d 141 (2007). The AG can still ask the trial court to correct the error under CR 60(a).

Because RCW 10.77.094, rendered the entire proceeding initiated by the AG in this case moot, Mr. Hayden's appeal seems somewhat pedestrian. The court should correct the clerical error changing the cause number from 84-1-01573-6 to 83100 and dismiss the Appellant's appeal.

IV. CONCLUSION

For the foregoing reasons, the court should correct the clerical error and dismiss the appeal.

DATED this 8th day of April, 2013.

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By: _____
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APPENDIX A

54361-0-I/2

Hayden petitioned for release and final discharge on October 29, 2003. He argued that because the trial court did not set a maximum term under the criminal statutes, his maximum should be 20 years. He contended that the 20 years having expired, he should finally be discharged. The trial court denied this motion. Hayden appeals.

DISCUSSION

Hayden contends that the trial court erred in denying his motion for release and final discharge. He argues that the maximum term of his commitment was 20 years, because the trial court did not set a maximum term after his acquittal and conditionally released him, and because the maximum sentence for the crime charged was not less than 20 years. We review this question of law de novo.¹

Chapter 10.77 of the Revised Code of Washington addresses procedures controlling the criminally insane. Among those statutes in effect at the time of the crime, former RCW 10.77.020(3) (1993) stated that:

Whenever any person has been committed under . . . this chapter, or ordered to undergo alternative treatment following his acquittal of a crime charged by reason of insanity, such commitment or treatment cannot exceed the maximum **possible** penal sentence for any offense charged for which he was acquitted by reason of insanity. (emphasis added).

¹ Tenore v. AT&T Wireless Serv., 136 Wn.2d 322, 329-30, 962 P.2d 104 (1998).

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Under former RCW 9A.20.020 (1981), the maximum term of imprisonment upon conviction of a class A felony such as first degree assault was a term of not less than 20 years. And former RCW 9.95.010 (2001) stated that:

When a person is convicted of any felony [including first degree assault], [t]he maximum term . . . may be for any number of years up to and including life imprisonment but . . . **not less than twenty years.** (emphasis added).

Hayden argues that because the trial court did not set a maximum sentence after his acquittal and released him into the community, logic, common sense, and the rule of lenity compel the conclusion that his maximum sentence was the 20 years stated as the shortest maximum sentence allowed. Because that term has elapsed, he contends that the trial court no longer has jurisdiction to commit him, and requests release. We disagree.

Each statute pertinent to this case is clear and unambiguous: the maximum term of commitment after acquittal by reason of insanity for first degree assault is the maximum possible sentence Hayden could have received for the assault under the terms of the statute, not the maximum sentence the trial court may have imposed had he been convicted. As Division Two of this court concluded in State v. Sunich,² where an individual is acquitted of a crime by reason of insanity, the statute "directs us to the maximum possible sentence at charging, not upon conviction."³

The trial court's failure to impose a maximum sentence does not mean, as Hayden argues, that the lowest possible maximum would have been imposed

² 76 Wn. App. 202, 884 P.2d 1 (1994).

³ Sunich, 76 Wn. App. at 206.

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and must be used. Because Hayden was not convicted, the maximum sentence the trial court may or may not have imposed upon conviction is irrelevant. The maximum possible sentence set by the pertinent statute is controlling. Hayden is subject to commitment for life after his acquittal by reason of insanity because that is the maximum possible sentence for first degree assault. The trial court did not err in denying Hayden's motion for release and final dismissal.

AFFIRMED.

FOR THE COURT:

Baker

Uppelwick, J

Cross

APPENDIX B

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
)	
)	No. 83100 SEA
)	
vs.)	
)	STATE'S BRIEF OPPOSING THE
DONALD HAYDEN,)	DEPARTMENT'S MOTION DUE TO
)	LACK OF JURISDICTION
)	
)	
)	
)	

I. RELIEF REQUESTED

The Department of Social and Human Services (the Department), through the Attorney General, has filed a motion for limited intervention to forcibly medicate a criminally insane acquittee. However, the court lacks jurisdiction to hear the Department's motion under the civil commitment cause number. Therefore, the only permissible action the court may take is to dismiss the motion.

II. PROCEDURAL FACTS

Donald Hayden was charged with Assault with a Deadly Weapon in the First Degree. On November 14, 1997, he was found Not Guilty By Reason of Insanity and was civilly committed to the "custody of the Secretary of the Department of Social and Health Services for

STATE'S BRIEF OPPOSING THE
DEPARTMENT'S MOTION DUE TO
LACK OF JURISDICTION - 1

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1 hospitalization at such place as shall be designated for the care and treatment of the criminally
2 insane."

3 **III. ARGUMENT**

4 **A. The Court Does Not Have Jurisdiction to Hear this Motion**

5 Subject matter jurisdiction means the tribunal has authority over the type of controversy
6 it is being asked to adjudicate. *Marley v. Dep't of Labor & Indus.*, 125 Wn.2d 533, 539, 886
7 P.2d 189 (1994). A grant of subject matter jurisdiction by constitutional provision or by statute
8 is not necessarily broadly self executing and may require additional legislation. *City of Tacoma*
9 *v. Mary Kay*, 117 Wn. App. 111, 70 P.3d 114 (2003). A lack of jurisdiction implies that tribunal
10 has no authority to decide the claim at all, let alone order a particular kind of relief. *Marley*, 125
11 Wn.2d at 539. A judgment entered by a court that lacks jurisdiction is void. *Id.*

12 Civil commitment is inherently a matter of substantive law subject to the legislative
13 authority. *See Kansas v. Hendricks*, 521 U.S. 346, 359-60, 117 S.Ct. 2072 (1997) (pointing out
14 broad discretion of state legislatures in enacting civil commitment schemes). The subject matter
15 jurisdiction of a trial court over an RCW 10.77 civil commitment is set forth in the statute. Once
16 a person meets criteria for inpatient civil commitment, the court is required to "order his or her
17 hospitalization." RCW 10.77.110(1).

18 Once the court commits an individual to the care, custody and control of the Department
19 of Social and Human Services its authority over that individual is limited. *In re Lowe*, 89 Wn.2d
20 824, 827, 576 P.2d 65 (1978). The court does not have jurisdiction to establish treatment
21 requirements for the defendant that the Department must follow. *Id.* Only the Department
22 determines the care and treatment necessary for each individual. RCW 10.77.120. Nor does the
23 court have jurisdiction to order the defendant be placed at a specific state facility. *In re J.S.*, 124

1 Wn.2d 689, 880 P.2d 976 (1994); *In re Eaton*, 110 Wn.2d 892, 899, 757 P.2d 961 (1988); *In re*
2 *Lowe*, 89 Wn.2d 824, 827, 576 P.2d 65 (1978). Only the Department can determine the state
3 facility in which to place the defendant that will provide him/her adequate care and treatment.
4 RCW 10.77.120. The Department even has the authority to place the defendant in a facility
5 operated by the Department of Corrections (DOC) if needed. RCW 10.77.091.

6 In civil commitment proceedings, the court's jurisdiction, once the defendant is deemed
7 not guilty by reason of insanity, is limited solely to determining the defendant's eligibility for
8 conditional or unconditional release. RCW 10.77.150, .190, & 200. Based on these limitations,
9 the next stage for trial court involvement in Mr. Hayden's case is when the court receives a
10 Petition for Conditional Release pursuant to RCW 10.77.150. Until then, the court does not have
11 jurisdiction to hear a motion to intervene and forcibly medicate the defendant.

12 The Department asserts that the court is authorized to not only hear, but grant its motion
13 based on *State v. CB*, No. 40558-0-II. However, the Court of Appeal's Division II ruling
14 specifically did not address subject matter jurisdiction and left this question open. The only issue
15 CB raised was the Department's statutory authority to petition for the administration of
16 antipsychotic medication against a defendant's will. *CB* at 6.

17 By failing to address the superior court's jurisdiction in RCW 10.77 matters, the court
18 essentially placed a proverbial cart – full of forcibly medicated criminally insane individuals –
19 before the horse. Without jurisdiction this court cannot address the Department's statutory
20 authority.

21 The Department also cites to case law authorizing the involuntary medication of mentally
22 ill prison inmates (*Washington v. Harper*, 494 U.S.210, 110 S. Ct 1028 (1990)) to illustrate the
23

1 court's authority to order Mr. Hayden be forcibly medicated in this case. However, *Harper* does
2 not stand for the proposition that judicial intervention to seek forcible medication is authorized.

3 To the contrary, DOC's authority to forcibly medicate inmates was created by an
4 administrative policy, which is absent here. Unlike the Department in this case, DOC does not
5 appear in court seeking judicial intervention and asking the court to manage its facilities. While
6 the Department's action in this case begs the question as to why the court would want to engage
7 in the business of managing the Department's facilities, it clearly does not have jurisdiction to do
8 so under RCW 10.77. The Department's motion should be dismissed.

9 **B. King County Superior Court**

10 This very motion was heard before the Honorable Mary Yu on December 14, 2011, under
11 King County Cause Number 07-1-01659-3 SEA. This was the first hearing in King County since
12 the Court of Appeals issued its decision in *CB*. Judge Yu agreed with the State and found that
13 the court lacked subject matter jurisdiction to address the Department's Motion. See Order
14 attached as Ex. 1.

15 **C. The Court Should Not Entertain Motions Regarding the Conditions of**
16 **Confinement at Western State Hospital.**

17 The matters that can be brought before this court in civil commitment cases are strictly
18 defined by statute. RCW 10.77 does not serve as a general forum to resolve any dispute that
19 Western State Hospital may have with Hayden's medication compliance. The court should not
20 delve into matters that involve operation of the institution, including whether or not Hayden should
21 be allowed forcibly medicated.

22 In *In re Turay*, 139 Wn.2d 379, 986 P.2d 790 (1999), the Washington Supreme Court
23 addressed the trial court's role in civil commitment proceedings for sexual violent predators under

1 RCW 71.09. Like RCW 10.77, RCW 71.09 limits the court's jurisdiction to consider motions
2 outside the civil commitment proceedings. *In re Petersen*, 138 Wn.2d 70, 980 P.2d 1204 (1999).
3 In *Turay*, the Court held that the SVP trial court's role is not to determine whether the conditions of
4 confinement at SCC, which is also a secure facility, operated by the Department, are lawful:

5 The trier of fact's role in an SVP commitment proceeding, as the trial
6 judge correctly noted, is to determine whether the defendant constitutes an SVP;
7 it is not to evaluate the potential conditions of confinement. See RCW
8 71.09.060(1) (stating '[t]he court or jury shall determine whether, beyond a
9 reasonable doubt, the person is a sexually violent predator. . . . If the court or jury
determines that the person is a sexually violent predator, the person shall be
committed to the custody of the department of social and health services [DSHS]
for placement in a secure facility operated by the department of social and health
services').

10 *Turay*, 139 Wn.2d at 404.

11 In the case at hand, the Department is essentially petitioning the court regarding
12 Hayden's lack of compliance with the conditions of confinement at Western State Hospital. If
13 the court lacks jurisdiction to intervene on behalf of a civilly committed person to address
14 conditions of confinement at a facility run by the Department, it also lacks jurisdiction to address
15 the same issue when raised by the Department. The court should reject the Department's invitation
16 to intervene in institutional matters.

17 **D. The Department Has No Role in These Proceedings Apart from Remanding**
18 **Conditional or Unconditional Release.**

19 The criminal insanity statute provides no authority for the Department to operate as a
20 party in NGRI proceedings. Under the statute, the role of the Department is to provide
21 information to the court and to provide recommendations on the disposition of a particular
22 patient. *See generally* RCW 10.77.110 *et seq.* Even if the Department takes a conditionally
23 released defendant into custody because it reasonably believes the defendant is failing to adhere

1 to the terms of his condition of release, only the prosecuting attorney appears as the party
2 representing the State. RCW 10.77.190. By petitioning to intervene the Department is
3 requesting recognition from the court over that of the only party authorized by the statute to
4 represent the State.

5 **E. RCW 71.05 Provides No Subject Matter Jurisdiction.**

6 The Department erroneously suggests that this court has jurisdiction to graft and
7 incorporate portions of RCW 71.05 into RCW 10.77. However, the Defendant is committed
8 under RCW 10.77, not RCW 71.05. By citing to RCW 71.05, the Department actually refutes
9 the court's jurisdiction. Under RCW 71.05, requests to forcibly medicate go to the county court
10 where the defendant resides.

11 In this case, should the Department seek to exercise its RCW 71.05 authority to forcibly
12 medicate Mr. Hayden, both jurisdiction and venue are with the Pierce County Superior Court.

13 **IV. CONCLUSION**

14 The court lacks basic subject matter jurisdiction to address the Department's motion. The
15 Department, essentially, is asking this court to legislate from the bench. The only permissible
16 action by the court is to dismiss the Department's motion.

17 DATED this 22nd day of December, 2011.

18 DANIEL T. SATTERBERG
19 King County Prosecuting Attorney

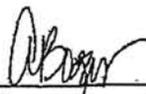
20 By: 
21 Alison Bogar, WSBA #30380
22 Senior Deputy Prosecuting Attorney

EXHIBIT 1

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON, COUNTY OF KING

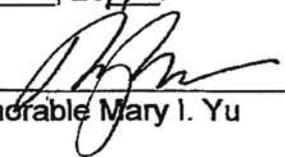
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Pavel Kolchik Resp/Def.

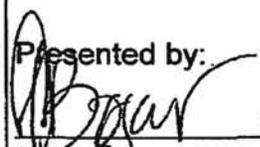
CAUSE No. 07-1-011059-3 SEA
ORDER ON CIVIL MOTION
(ORM)

This Court, having heard a motion by the Assistant Attorney General
to interfere and forcibly medicate the defendant.

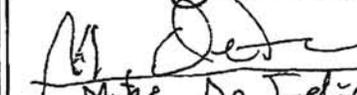
IT IS HEREBY ORDERED that The Court lack subject
matter jurisdiction to address the department's
motion.

DATED this 14 day of October, 2011.


Honorable Mary I. Yu

Presented by:
 #30380
Austin Bager, DPA.

 20333
Approved as to form


Mike DeFolice 10384
Advised 10/17

ORDER ON CIVIL MOTION

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