

NO. 70692-6-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

IN RE THE DETENTION OF:

RICHARD SCOTT

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

APPELLANT'S REPLY BRIEF

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A. ARGUMENT IN REPLY

As set forth in Richard Scott's opening brief, the trial court improperly denied his Civil Rule 60 motion to withdraw stipulation. Mr. Scott stipulated to the criteria for indefinite civil commitment based on a mental abnormality diagnosis that is no longer valid. The newly-discovered evidence and change in law and science that demonstrates hebephilia is no longer a valid basis for commitment entitles Mr. Scott to be relieved from the judgment. CR 60(b)(3), (11). Mr. Scott entered into a stipulation that he satisfied the criteria for commitment under the mistaken belief that hebephilia was a valid predicate diagnosis. Since Mr. Scott entered into the stipulation, the validity of the diagnosis has been subject to much debate and its validity rejected. It was manifestly unreasonable for the Superior Court to deny Mr. Scott's motion.

The State's response fails to overcome Mr. Scott's entitlement to relief. The State attempts to minimize Mr. Scott's entitlement to relief by disparaging his pro se pleadings in the trial court. Resp. Br. at 1-2, 19, 21-22, 28. But Mr. Scott's pro se pleadings sufficiently raised and supported his argument for withdrawing the stipulation. The Superior Court expressed no difficulty understanding or ruling on it.

*See* CP 399-400. In fact, the court annotated the form proposed order that the State submitted. *See id.*

The State's argument that the stipulation was based on a second diagnosis is of no moment. *See* Resp. Br. at 10-11. As Mr. Scott set forth below and argued in the opening brief, his understanding of the validity of the hebephilia diagnosis informed his decision to stipulate. CP 396. He elected not to argue to the jury the invalidity of this second diagnosis, pedophilia, under the mistaken understanding that the State's expert's hebephilia diagnosis was valid. *See* CP 396. Thus, his waiver was not knowing, intelligent and voluntary because it was not informed by the controversy surrounding a hebephilia diagnosis. In light of the new scientific evidence, Mr. Scott should be allowed to withdraw that agreement.<sup>1</sup>

Finally, the State is incorrect that Mr. Scott is not entitled to relief under CR 60(b)(11) and his motion is time-barred. As discussed in Mr. Scott's opening brief, similar relief was obtained in *In re Det. of*

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<sup>1</sup> The State attached material that is not part of this appeal to its Response Brief. Mr. Scott has filed separately a motion to strike that extraneous material. Because the State did not follow the proper procedure to add that material to the record in this case, this Court should not consider it. Nonetheless, substantively the transcript offers no buttress to the State's argument. Mr. Scott does not contest that he entered into the stipulation, but his basis for doing so depended on information that has since changed. Civil Rule 60(b) provides for relief on the bases discussed by Mr. Scott herein and in the opening brief.

*Ward*, 125 Wn. App. 374, 377-78, 104 P.3d 751 (2005). The State attempts to distinguish *Ward* by parsing a non-existent gap between the change of law at issue there with the developments at issue here. Moreover, the State's argument ignores that relief under CR 60(b)(11) is not limited to changes in law. Rather, CR 60(b)(11) affords relief from judgment for "any other reason." Mr. Scott thoroughly presented those reasons in his opening brief.

B. CONCLUSION

The mental abnormality diagnosis justifying Mr. Scott's commitment and underlying his stipulation has been subject to immense debate and conflict in recent years. At this time, it is not generally accepted in the field. Mr. Scott should be permitted to challenge the sufficiency of the diagnosis due to this recent change. On the grounds presented here and in Mr. Scott's opening brief, this Court should reverse the trial court's denial of Mr. Scott's CR 60(b) motion and remand for an initial commitment trial.

DATED this 12th day of March, 2014.

Respectfully submitted,

  
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Marla L. Zink – WSBA 39042

Washington Appellate Project  
Attorney for Appellant

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DIVISION ONE**

IN RE THE DETENTION OF

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**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 12<sup>TH</sup> DAY OF MARCH, 2014, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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**SIGNED** IN SEATTLE, WASHINGTON THIS 12<sup>TH</sup> DAY OF MARCH, 2014.

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