

NO. 73008-8-I

**COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON,

Respondent,

v.

ISAAC ZAMORA,

Appellant.

BRIEF OF DEPARTMENT OF CORRECTIONS

ROBERT W. FERGUSON
Attorney General

TIM LANG, WSBA #21314
Sr. Assistant Attorney General
Corrections Division, OID #91025
PO Box 40116
Olympia WA 98504-0116
(360) 586-1445
TimothyL@atg.wa.gov

TABLE OF CONTENTS

I. INTRODUCTION1

II. ASSIGNMENTS OF ERROR AND ISSUES PRESENTED
BY DOC’S APPEAL3

III. STATEMENT OF THE CASE3

IV. ARGUMENT6

 A. The Trial Court Lacked Jurisdiction To Impose
 Conditions On DOC Because DOC Was Not A Party
 To The Underlying Proceedings6

 B. A Sentencing Court Lacks Authority To Direct Treatment
 And Housing Decisions Concerning An Offender
 Committed To DOC Custody8

V. CONCLUSION12

TABLE OF AUTHORITIES

Cases

<i>City of Seattle v. Fontanilla</i> , 128 Wn.2d 492, 909 P.2d 1294 (1996).....	7
<i>Hillis v. Dept. of Ecology</i> , 131 Wn.2d 373, 932 P.2d 139 (1997).....	9
<i>In re Cage</i> , 181 Wn. App.588, 326 P.3d 805 (2014).....	8, 9
<i>McNabb v. Dept. of Corrections</i> , 163 Wn.2d 393, 180 P.3d 1257 (2008).....	11
<i>State v. Cloud</i> , 95 Wn. App. 606, 976 P.2d 649 (1999).....	7
<i>State v. G.A.H.</i> , 133 Wn. App. 567, 137 P.3d 66 (2006)	8

Statutes

RCW 10.77.200	1, 3, 7, 10
RCW 10.77.200(3).....	2, 4, 7, 10
RCW 72.01.050	9
RCW 72.02.210	9
RCW 72.02.240	9

Rules

Rules of Appellate Procedure 3.1	2, 6
Rules of Appellate Procedure 16	11
Rules of Appellate Procedure 16.4	12

I. INTRODUCTION

In 2009, Isaac Zamora pled guilty to four counts of aggravated first degree murder and the trial court sentenced him to life in prison without the opportunity for parole. However, the court also found Mr. Zamora not guilty by reason of insanity on two additional counts of aggravated murder, and ordered him committed to the Department of Social and Health Services (DSHS), before his incarceration, for treatment at Western State Hospital. Mr. Zamora remained at Western State Hospital until December 2012, when DSHS transferred him to the Department of Corrections (DOC) Special Offender Unit (SOU) pursuant to RCW 10.77.091. That statute allows for the transfer of criminally insane state hospital patients to a DOC facility when the patient cannot safely be managed in a hospital setting.

DOC has housed and cared for Mr. Zamora since December 2012. The record confirmed that he is doing well at SOU, in fact better than at the hospital, and qualified DOC health care providers are caring for him appropriately. In light of these facts, DSHS petitioned under RCW 10.77.200 for Mr. Zamora's release from his civil commitment and transfer to DOC custody to serve his criminal sentence. After a three-day evidentiary hearing last September on DSHS's petition, the trial court found Mr. Zamora's condition "manageable within a state correctional

institution,” the release standard under RCW 10.77.200(3), and ordered Zamora released to DOC custody.

While granting the relief sought by DSHS, the court added provisions to its order that have caused DOC (which was not a party below) to intervene and appeal. The court expressed uncertainty as to its authority over DOC, but effectively enjoined DOC with regard to two key aspects of Mr. Zamora’s care and custody. The court first ordered that DOC continue to house Mr. Zamora at the SOU unless and until two psychiatrists involved in his care jointly recommend transfer to another DOC facility. Second, the court directed DOC to appoint Mr. Zamora a psychiatrist to oversee his case and monitor his care.

Although DOC shares the sentencing court’s desire to see Mr. Zamora successfully transition to DOC custody, it objects to these two conditions because, as unambiguously conceded by Mr. Zamora in open court, the conditions exceed the court’s authority. The court had no personal jurisdiction over DOC because DOC was not a party to the underlying proceedings. More fundamentally, the court lacked authority or a sound basis to direct custody and care decisions statutorily entrusted to DOC. As an aggrieved party under RAP 3.1, therefore, DOC requests reversal of the conditions imposed on DOC in Section IV, paragraph 2, of the trial court’s January 6, 2015, order.

II. ASSIGNMENTS OF ERROR AND ISSUES PRESENTED BY DOC'S APPEAL

Assignment of Error: The trial court erred when it directed how DOC should care for Mr. Zamora once he is transferred to DOC custody to serve his criminal sentence.

Issues Presented: DOC's appeal narrowly concerns the trial court's authority to direct how DOC administers criminal sentences. The first issue is whether the trial court had personal jurisdiction over DOC, a non-party to the underlying proceedings. The second issue is whether the trial court had authority to direct how prison officials are to house or care for Mr. Zamora once he is committed to DOC custody to serve his criminal sentence.

III. STATEMENT OF THE CASE

Mr. Zamora's Judgment and Sentence requires that he be committed to DOC custody to serve a criminal sentence of life without parole upon his discharge from DSHS custody. CP 131. In December 2013, DSHS filed a petition pursuant to RCW 10.77.200 seeking Mr. Zamora's release and discharge from DSHS custody and transfer to DOC. CP 30-36. RCW 10.77.200 provides that a person committed to DSHS custody after having been found not guilty by reason of insanity, who will be transferred to a state correctional facility to serve a class A felony

sentence upon his release, may be released if his mental disease or defect is manageable within a state correctional institution or facility. RCW 10.77.200(3). DSHS alleged in its petition that Mr. Zamora had progressed in treatment to the point that his condition was manageable in a DOC correctional facility.

In September 2014, the trial court held an evidentiary hearing on DSHS's petition. The court heard testimony from Brian Waiblinger, M.D., a psychiatrist and the Medical Director at Western State Hospital (Verbatim Report of Proceedings, Sept. 8, 2014, at 14-136); Cynthia Goins, Ph.D., a clinical psychologist at DOC's Special Offender Unit (SOU) (VRP, Sept. 8, 2014, at 137-69, Sept. 9, 2014, at 3-44, 115-17); Paul Jewitt, M.D., a psychiatrist at SOU (VRP, Sept. 9, 2014, at 44-88); Bruce Gage, M.D., DOC's Chief of Psychiatry (VRP, Sept. 9, 2014, at 89-117); and Sally Johnson, M.D., a psychiatrist retained by Mr. Zamora (VRP Sept. 9, 2014, at 118-176, Sept. 10, 2014, at 3-59). Though DOC health care providers testified concerning Mr. Zamora's care and condition, these witnesses were called and examined by the parties petitioning for relief and opposing: DSHS and Zamora. DOC did not participate in the evidentiary hearing nor has it ever been a party to the underlying proceedings.

At the conclusion of the evidentiary hearing, the trial court made findings concerning Mr. Zamora's condition and care:

The experts agree, and their testimony establishes the following: (1) Mr. Zamora continues to suffer from a serious mental illness; (2) Mr. Zamora has not been a management problem during his 20 months at SOU; (3) DOC has cared for Mr. Zamora's (sic) appropriately during his 20 months at SOU; and (4) Mr. Zamora has responded better to treatment at the SOU than he did while at Western State Hospital.

CP 8-9. Based on these findings the court concluded Mr. Zamora's mental illness was manageable within a state correctional institution, ordered him released from DSHS custody, and remanded him to DOC custody to serve his criminal sentence. CP 9.

Pertinent to this appeal, however, the court imposed conditions on DOC with regard to its care and custody of Mr. Zamora:

Once in the custody of DOC, Mr. Zamora will remain in the SOU and not to be transferred until two psychiatrists who have worked with him jointly recommend that he be transferred somewhere out of the SOU. DOC will also appoint a psychiatrist to be responsible for monitoring Mr. Zamora's care.

CP 9. The trial judge explained the basis for these conditions in his oral ruling. The judge said that although Mr. Zamora was "doing as well as to be expected" and was on "probably the best treatment and medication regimen he's been on to date," "I'm just overlaying it with a couple of additional requirements to ensure Mr. Zamora doesn't get left to the back

burner, and that's based on recommendations from Dr. Johnson." CP 27; (VRP, Sept. 10, 2014, at 90).

In response, counsel for Mr. Zamora expressed concern that the court lacked authority to direct DOC's care of Mr. Zamora. CP 25-26; (VRP, Sept. 10, 2014, at 88-89). DOC also objected to the court's action, filing a brief amicus curiae before entry of the final order. CP 1-5. The court expressed uncertainty as to whether it had authority over DOC, but nevertheless, on January 6, 2015, entered its Findings of Fact, Conclusions of Law & Order on DSHS's Petition for Release and Final Discharge, which included the DOC conditions. VRP, Sept. 10, 2014, at 89; CP 7-9. The court also stayed its order pending appeal. CP 9.

DOC filed a timely notice of appeal as an aggrieved party under RAP 3.1, challenging the court's authority to impose the conditions set forth in Section IV, paragraph 2, of the order. CP 11-12.

IV. ARGUMENT

A. The Trial Court Lacked Jurisdiction To Impose Conditions On DOC Because DOC Was Not A Party To The Underlying Proceedings

As a threshold matter, the conditions the trial court imposed on DOC are void because the court lacked personal jurisdiction over DOC. A court is "without authority to order an entity that is not a party to the litigation to do anything." *City of Seattle v. Fontanilla*, 128 Wn.2d 492,

502, 909 P.2d 1294 (1996) (recognizing the general rule that a judgment can be binding only upon the parties to a case). This “conclusion is consistent with the general rule that ‘one is not bound by a judgment *in personam* in a litigation in which he is not designated as a party or to which he has not been made a party by service of process.’” *Id.* (citations omitted).

DOC was not a party to the underlying criminal cause. *See State v. Cloud*, 95 Wn. App. 606, 611-15, 976 P.2d 649 (1999) (the State, represented by the prosecutor, and the defendant are the proper parties in a criminal proceeding). The parties in the underlying matter are the state of Washington, represented by the Skagit County Prosecuting Attorney’s Office, and the Defendant, Mr. Zamora. *See generally* RCW 10.77.200(3) (expressly stating that the prosecuting attorney “shall represent the state” in petitions for release and recognizing that state agencies such as DSHS and DOC are legally separate entities). DSHS also is a party because the court committed Mr. Zamora to its custody and RCW 10.77.200 authorizes DSHS to petition for Mr. Zamora’s release. DOC, however, was never a party to the underlying matter. The court, therefore, lacked jurisdiction to impose conditions on DOC as part of the transfer of Mr. Zamora’s custody.

In an analogous case, this Court held that the superior court, in a juvenile criminal proceeding, lacked personal jurisdiction over DSHS when the court ordered DSHS to place the juvenile in foster care. *State v. G.A.H.*, 133 Wn. App. 567, 576-80, 137 P.3d 66 (2006). After G.A.H. pled guilty to the charges, the court ordered that he be released to DSHS for foster care assessment and placement, even though DSHS was not a party to the juvenile criminal proceeding. The Court of Appeals reversed the trial court order, ruling that because “DSHS was not a party to G.A.H.’s juvenile offender proceeding . . . , the court did not have personal jurisdiction over DSHS.” *Id.* at 576. Consequently, “[t]he court order requiring DSHS to place G.A.H. in foster care is . . . void and must be reversed.” *Id.* (citation omitted). Similarly, because DOC was not a party below, the trial court was without jurisdiction to impose conditions on DOC in the transfer order, and the conditions are reversible as void.

B. A Sentencing Court Lacks Authority To Direct Treatment And Housing Decisions Concerning An Offender Committed To DOC Custody

The trial court lacked authority to impose conditions on Mr. Zamora’s incarceration. When a court enters a final judgment and sentence of imprisonment, authority and jurisdiction over the defendant passes to DOC and DOC bears responsibility for executing the judgment and sentence. *In re Cage*, 181 Wn. App.588, 326 P.3d 805, 807 (2014).

“The courts have long recognized this division of power *and the transfer of the jurisdiction over a finally convicted felon from the judicial to the executive branch of government.*” *Id.* (citing *January v. Porter*, 75 Wn.2d 768, 773-74, 453 P.2d 876 (1969) (emphasis in original)). “The separation of powers doctrine ensures that the fundamental functions of each branch of government remain inviolate.” *Hillis v. Dept. of Ecology*, 131 Wn.2d 373, 389-90, 932 P.2d 139 (1997) (citing *Carrick v. Locke*, 125 Wn.2d 129, 135, 882 P.2d 173 (1994); *In re Juvenile Director*, 87 Wn.2d 232, 242, 552 P.2d 163 (1976)).

The transfer of jurisdiction over a convicted felon from the judiciary to DOC is express under Washington law. RCW 72.02.210 states that an offender convicted of an offense punishable by imprisonment “shall . . . be sentenced to imprisonment in a penal institution under the jurisdiction of the department *without designating the name of such institution*, and be committed to the reception units for classification, confinement and placement in such correctional facility under the supervision of the department *as the secretary shall deem appropriate.*” RCW 72.02.210 (emphasis added). Similarly, RCW 72.02.240 specifies that “[t]he secretary shall determine the state correctional institution in which the offender shall be confined . . .,” and RCW 72.01.050 grants the secretary “full power to manage, govern, and name all state correctional

facilities, subject only to the limitations contained in laws relating to the management of such institutions.” The court’s order directing treatment and housing decisions concerning Mr. Zamora while in DOC custody runs directly contrary to these statutes and exceeded the court’s authority.

The fact that Mr. Zamora’s criminal commitment follows his release from a civil commitment does not change the analysis. RCW 10.77.200 defines the procedure for release from DSHS custody. The release standard is whether Mr. Zamora’s mental health condition is “manageable within a state correctional institution.” RCW 10.77.200(3). The court’s role is to apply that standard, which it did, and found that DSHS met the standard based on uncontroverted expert testimony that Mr. Zamora has done well over 20 months at SOU and that qualified DOC health services staff members have cared for him appropriately. CP 8-9. Having made that determination, the Court’s statutory authority extended only to require Mr. Zamora’s release from DSHS jurisdiction under the not guilty by reason of insanity portions of his judgment and sentence, and commitment to DOC custody to serve the pending criminal sentence. No statute, including RCW 10.77.200, grants the trial court authority to direct

how DOC should administer the sentence once Mr. Zamora is in its custody.¹

The undisputed testimony before the trial court established that DOC has appropriately met Mr. Zamora’s mental health needs over nearly two years at SOU. No evidence suggested Mr. Zamora might be “left to the back burner” while in DOC custody, as the court speculated in justifying imposition of the conditions. But even assuming, for the sake of argument, that DOC were to neglect Mr. Zamora’s needs, he would not be without a remedy. DOC readily acknowledges that jurisdiction over persons committed to its custody comes with constitutional and other obligations to provide for their health and safety—obligations enforceable through civil action if unmet.

A court’s primary authority to ensure adequate care for prisoners arises in the context of adjudicating civil rights claims, and even then only upon a proper showing. *See McNabb v. Dept. of Corrections*, 163 Wn.2d 393, 406-07, 180 P.3d 1257 (2008) (denying request to enjoin DOC force-feeding policy, noting deference courts give prison officials in carrying their mandate to provide medical services to inmates). The trial court ignored this fundamental limitation when it effectively enjoined DOC (a

¹ The law does, of course, provide inmates means to challenge the lawfulness of their confinement or conditions of confinement, including personal restraint petitions pursuant to RAP 16 and civil rights actions. However, neither proceeding is at issue here.

nonparty) with regard to its care and custody of Mr. Zamora, and moreover did so without a showing that the relief ordered somehow was necessary to remedy a violation of Mr. Zamora's rights. The trial court exceeded its authority.²

V. CONCLUSION

The law entrusts the administration of criminal sentences to DOC, subject only to constitutional and statutory mandates concerning the rights afforded prisoners. No authority supports the trial court's order directing how prison officials are to administer Mr. Zamora's sentence once he is committed to DOC custody. DOC therefore respectfully requests reversal of Section IV, paragraph 2, of the trial court's January 6, 2015 order.

RESPECTFULLY SUBMITTED this 2nd day of September, 2015.

ROBERT W. FERGUSON
Attorney General

s/ Tim Lang

TIM LANG, WSBA #21314
Sr. Assistant Attorney General
Corrections Division, OID #91025
PO Box 40116
Olympia WA 98504-0116
(360) 586-1445
TimothyL@atg.wa.gov

² This Court may also review confinement using a personal restraint petition in RAP 16.4. Zamora did not bring any such petition. And the trial court's conditions do not purport to meet the Personal Restraint Petition (PRP) standards for unlawful or unconstitutional confinement.

CERTIFICATE OF SERVICE

I caused to be served a copy of the foregoing document on all parties or their counsel of record as follows:

- US Mail Postage Prepaid
- United Parcel Service, Next Day Air
- ABC/Legal Messenger
- State Campus Delivery
- Hand delivered by _____

TO:

NANCY P. COLLINS
WASHINGTON APPELLATE PROJECT
1511 THIRD AVENUE, SUITE 701
SEATTLE WA 98101
wapofficemail@washapp.org

and

ROBERT ANDREW ANTANAITIS
PO BOX 40124
OLYMPIA WA 98504-0124
RobertA1@atg.wa.gov

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

EXECUTED this 2nd day of September, 2015, at Olympia, WA.

s/ Judy Lonborg
JUDY LONBORG
Legal Assistant