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2 SUPREME COURT
3 STATE OF WASHINGTON
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9 No. 95366-0
10 SUPREME COURT
11 OF THE STATE OF WASHINGTON

12 In re the Detention of:)
13 James McMahan) Supplemental Motion to Consolidate Cases
14 In re the Detention of:) (RAP 3.3)
15 Shawn Botner) Court of Appeals Cause No: 34192-5-III
16 Appellants/Petitioners)
17 _____)

18 **I. IDENTITY OF THE MOVING PARTY**

19 James McMahan and Shawn Botner, Appellants/Petitioners, seek the relief outlined in Part II
20 of this motion.

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22 **II. STATEMENT OF RELIEF SOUGHT**

23 Pursuant to RAP 3.3(b), Appellants/Petitioners seek consolidation of this matter with

24 In Re: Sammy Wright No. to be set (Motion for Discretionary Review and Motion to
25 Consolidate filed February 28, 2018).

26 The Motion to Consolidate with In Re Michael Wright (95390-2) is pending.

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29 *Supplemental Motion for Consolidation - 1*

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3 **III. FACTS RELEVANT TO MOTION**

4 As spelled out in the accompanying declaration, these cases present the same issues and can be
5 efficiently resolved in a single proceeding. A Petition for Review was filed in the four consolidated
6 Botner/McMahan cases on December 21, 2017. Motion for Discretionary Review for Michael Wright
7 was filed on January 3, 2018, and in Sammy Wright on February 28, 2018. In addition, Appellate counsel
8 anticipates seeking review in another pair of similar consolidated cases. See attached Declaration of
9 Counsel.
10

11 **IV. GROUNDS FOR RELIEF AND ARGUMENT**

12 Under RAP 3.3(b), the Supreme Court “on motion of a party, may order the consolidation of
13 cases or the separation of cases for the purpose of review.” The motion should be made “if consolidation
14 would save time and expense and provide for a fair review of the cases.” RAP 3.3(b).
15

16 Consolidation allows an appellate court to make “a comprehensive decision that best uses
17 judicial resources.” *Skagit Cty. v. Skagit Hill Recycling, Inc.*, 162 Wn. App. 308, 321 n. 13, 253 P.3d
18 1135 (2011). Because these cases present identical issues, consolidation would save time and expense,
19 allow a fair review, and produce a comprehensive decision that best uses judicial resources. *Id.*; RAP
20 3.3(b).
21

22 Consolidation is appropriate where cases present “identical issues of law.” *Jury v. State, Dep’t of*
23 *Licensing*, 114 Wn. App. 726, 730 n. 1, 60 P.3d 615 (2002). In *Jury*, this court consolidated two
24 unrelated cases in which the appellants argued that implied consent warnings were inadequate. *Id.*, at
25 732; see also *Nielsen v. Employment Sec. Dep’t of State*, 93 Wn. App. 21, 24 n. 1, 966 P.2d 399
26 (1998). Appellate courts have also consolidated cases where “the essential assignments of error and
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28 *Supplemental Motion for Consolidation - 2*
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3 the facts are the same.” *State v. Nelson*, 152 Wn. App. 755, 759, 219 P.3d 100, 102 (2009); *see also*
4 *State v. Brown*, 158 Wn. App. 49, 52, 240 P.3d 1175, 1177 (2010) (“We have consolidated these cases
5 for purposes of this opinion since both appeals are based on the same facts and raise mostly the same
6 assignments of error.”)

7
8 These cases should be consolidated under RAP 3.3(b). Each case relates to the annual review
9 of patients civilly committed to the Special Commitment Center. By statute, “[e]ach person
10 committed under [Chapter 71.09 RCW] shall have a current examination of his or her mental
11 condition made by the department at least once every year.” RCW 71.09.070(1). Other provisions
12 require the evaluator to prepare a report and file it with the committing court. RCW 71.09.070(2) and
13 (3).

14
15 The cases here present the same basic questions:

- 16 (1) Does the constitutionally critical annual review process require the State to
17 complete its yearly evaluation of civilly committed patients by the anniversary of
18 each patient’s initial commitment?
19 (2) Does failure to produce the annual review report by the anniversary of commitment
20 violate both RCW 71.09.070 and due process?
21 (3) What remedies are available when the State fails to produce a timely annual review?

22 In each case, the State failed to complete its annual review by the anniversary of commitment.
23 Because these cases present “identical issues of law,” the Supreme Court should order consolidation.¹
24 RAP 3.3(b); *Jury v. State, Dep’t of Licensing*, 114 Wn. App. at 730 n. 1.

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27 ¹ Michael Wright’s case presents one issue not present in the other cases.

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Consolidation will “save time and expense and provide for a fair review of the cases.” RAP 3.3(b). It will also allow the Supreme Court to make “a comprehensive decision that best uses judicial resources.” *Skagit Hill Recycling*, 162 Wn. App. at 321 n. 13.

This court should grant the Motion to Consolidate.

Respectfully submitted February 28, 2018.

BACKLUND AND MISTRY



Jodi R. Backlund, No. 22917
Attorney for the Appellant

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No. 95366-0
SUPREME COURT
OF THE STATE OF WASHINGTON

In re the Detention of:)
James McMahan) Declaration of Counsel Re: Consolidation
) (Supplemental)
In re the Detention of:) and Certificate of Service
Shawn Botner)
) Court of Appeals Cause No: 34192-5-III
Appellants/Petitioners)
_____)

Jodi R. Backlund declares as follows:

1. Our office represents James McMahan, Shawn Botner, Michael Wright, and Sammy Wright. Each is a patient at the Special Commitment Center (SCC), having been civilly committed under Chapter 71.09 RCW.
2. In each patient’s case, the State did not complete its annual review before the anniversary of commitment.
3. In each case, the trial court held a show cause hearing. Each patient asked the court to find the annual report untimely, suppress it, and set a trial.
4. In the McMahan and Botner case, the trial judge excluded the untimely reports from the SCC and scheduled each matter for trial. The Court of Appeals consolidated their cases and reversed. Mr. Botner and Mr. McMahan filed a Petition for Review on December 21, 2017.

Declaration of Counsel - 1

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3 5. In the Michael Wright and Sammy Wright cases, each trial judge considered the late report and
4 refused to schedule a trial. The Court of Appeals denied review. Michael Wright filed a Motion for
5 Discretionary Review on January 3, 2018. Sammy Wright filed a Motion for Discretionary Review
6 on February 28, 2018.
- 6 6. All cases present the same issues regarding annual reviews completed after the anniversary of
7 commitment.
- 7 7. Appellants/Petitioners will argue (1) that their annual reviews were untimely, (2) that the late
8 annual reviews violated RCW 71.09.070 and due process, and (3) that each trial judge had
9 authority to disregard the untimely report and set each case for trial.
- 10 8. Consolidation would save time and expense, provide for a fair review of the cases, conserve
11 judicial resources, and allow for a single comprehensive decision of the issues.

11 **CERTIFICATE OF SERVICE**

12 **I certify that on February 28, 2018, I delivered an electronic version of this declaration and the**
13 **accompanying motion to Office of the Attorney General at:**

14 crjstvpef@atg.wa.gov
15 kellyp@atg.wa.gov
16 joshuas@atg.wa.gov
17 brookeb@atg.wa.gov

18 **using the Court's filing portal (with permission).**

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

21 Signed at Olympia, Washington on February 28, 2018.

22 

23

Jodi R. Backlund, WSBA No. 22917
24 Attorney for the Appellant

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29 *Declaration of Counsel - 2*

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Transmittal Information

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