

FILED
SUPREME COURT
STATE OF WASHINGTON
12/17/2018 4:19 PM
BY SUSAN L. CARLSON
CLERK

NO. 96473-4

SUPREME COURT OF THE STATE OF WASHINGTON

S.T.,

Appellant,

v.

State of Washington, Department of Social and Health Services, Division
of Vocational Rehabilitation,

Respondent.

RESPONDENT'S ANSWER TO PETITION FOR REVIEW

ROBERT W. FERGUSON
Attorney General

Amber L. Leaders
Assistant Attorney General
WSBA No. 44421

P.O. Box 40124
7141 Cleanwater Dr SW
Olympia WA, 98504
(360) 586-6504
AmberL1@atg.wa.gov

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I. INTRODUCTION

S.T. applied to the Department of Social and Health Services (DSHS) for vocational rehabilitation services. Although she was determined eligible by the Division of Vocational Rehabilitation (DVR), her case was closed when she refused to participate in mental health services. S.T. challenged this decision, and after both an administrative law judge and a superior court judge upheld DVR's decision, the Court of Appeals affirmed the decision in an unpublished opinion.

S.T. now seeks review of the Court of Appeals' decision. In addition to challenging the Court of Appeals' affirmation of DSHS' final order, S.T. is also challenging rulings denying the sealing of the entire court record, denying her appointment of legal counsel, and denying her request for court costs and compensation. She is also challenging the decision of the Court of Appeals declining to declare all state and federal laws involving mental health or mental illness unconstitutional.

Review by this Court is not warranted. S.T. fails to cite to any conflict between the Court of Appeals' decision and any decision of the Supreme Court or published decision of the Court of Appeals, nor does she demonstrate how the issues she presents are of substantial public interest or involve significant questions of law under either the United States

Constitution or the Washington State Constitution. S.T.'s petition for review should be denied.

II. COUNTERSTATEMENT OF THE ISSUES PRESENTED FOR REVIEW

This case is not appropriate for review by this Court under RAP 13.4(b). If review were granted, the issues presented would be:

1. Was the Court of Appeals correct in concluding S.T.'s First, Fifth, Sixth, and Fourteenth Amendment rights were not violated when, in a civil case, the trial court conducted an appropriate *Ishikawa* analysis prior to declining to seal the court records and close the courtroom?
2. Was the Court of Appeals correct in concluding that statements made on the record in open court were not private conversations under RCW 9.73.030?
3. Was the Court of Appeals correct in concluding S.T. had no right to appointed counsel in a civil case that did not involve a fundamental liberty interest?
4. Did the Court of Appeals err when it recited facts found in the administrative hearing record?
5. Was the Court of Appeals correct in concluding that the record did not show S.T. qualified for DVR services, and therefore S.T.'s First

Amendment rights were not implicated, when S.T. refused to participate in an evaluation to determine whether she qualified for DVR services?

6. Was the Court of Appeals correct in concluding that S.T. lacked standing to challenge the constitutionality of mental health laws where she failed to allege how the laws affected her personally or caused her any harm?
7. Was the Court of Appeals correct in declining to award S.T. any costs or damages when RCW 34.05.574(3) bars the award of costs and damages unless expressly provided for by law and S.T. failed to identify any law that provides for such an award?

III. COUNTERSTATEMENT OF THE CASE

In May 2014, S.T. applied for services from DVR. In June 2014, DVR found S.T. eligible for services. S.T. identified self-employment as her desired goal, and in December 2014, a consultant group recommended that S.T. participate in mental health treatment and a trial work experience. S.T. declined to participate in either, and in April 2015 DVR closed S.T.'s case due to her refusal to participate.

S.T. timely filed for an administrative hearing to appeal DVR's decision, and the Washington State Office of Administrative Hearings (OAH) held hearings in August and October of 2015. A final order was

entered in November 2015, and S.T. timely appealed and filed a petition for review in Clark County Superior Court in December 2015, along with a motion to seal the court record and close the courtroom. In March 2016, the superior court entered two orders. The first denied S.T.'s motion to seal the court record and close the courtroom, and the second affirmed the OAH decision.

S.T. then petitioned this Court for direct review and moved to have her name replaced with her initials in the record. This Court transferred both of these issues to the Court of Appeals in May 2017. The Court of Appeals temporarily sealed the appellate record pending further documentation and briefing in that court.

In September 2017, a Court of Appeals commissioner concluded that the *Ishikawa* factors were satisfied and temporarily sealed the court file and changed the caption to initials. Accordingly, the ruling stated, “[t]he record on appeal, including transcripts, documents, clerk’s papers, and audio and video recordings/exhibits shall be filed under seal, as well as any audio recordings of proceedings in this court. All filings (and exhibits thereto) and correspondence in the appellate courts to date that contain appellant’s full name shall be sealed.” The commissioner denied S.T.’s request for counsel in this ruling. Following briefing by the parties, the Court of Appeals issued an unpublished opinion in June 2018. The Court of Appeals upheld the decision

by DVR to close S.T.'s case when she refused to participate in mental health services; affirmed that substantial evidence supported the decision of the administrative law judge (ALJ) and that the ALJ did not fail to consider evidence; and concluded there had not been constitutional violations under the First, Second, Fourth, Fifth, Eighth, or Fourteenth Amendments. Additionally, the Court of Appeals affirmed the superior court's denial of S.T.'s motion to seal the entire court file and close the courtroom, stating the lower court correctly exercised its discretion in applying the *Ishikawa* factors and only redacting certain personal information. The Court of Appeals also determined that RCW 9.73.030 was inapplicable and declined to consider S.T.'s constitutional arguments regarding sealing under the First, Fourth, Fifth, Sixth, and Fourteenth Amendments because "she does not explain these claims or present any argument on them." The Court of Appeals further added that the Sixth Amendment expressly applies only in criminal cases, and therefore double jeopardy was not at issue in a civil administrative appeal. The Court of Appeals rejected all of S.T.'s other arguments and referred the matter to a commissioner to determine whether the appellate record should be permanently sealed. S.T. timely filed a petition for review with this Court.

IV. REASONS WHY REVIEW SHOULD BE DENIED

S.T. asks this Court to review the Court of Appeals decision affirming the superior court's ruling, but fails to plead any of the appropriate grounds supporting review by this Court. Even had she pled correctly, none

of the grounds supporting review applies. S.T. has offered no basis for concluding that this case is one the Court should entertain under RAP 13.4(b).

S.T.'s argument contains nothing addressing why this Court should grant review under any of the tests established in RAP 13.4(b). Her petition makes no mention of the applicable appellate tests and fails to follow the form directed by the rules. *See* RAP 13.4(c)(7), (9). In addition, nothing within her argument suggests she meets any of the grounds in RAP 13.4(b) for granting review. On its face, the petition is deficient, fails to identify a basis for review, and fails to follow the rules of appellate procedure. On these bases alone, review should be denied.

A. The Decision of the Court of Appeals Does Not Conflict with a Decision of this Court or the Court of Appeals

The Court of Appeals followed precedent by applying settled law on the issues of affirming the validity of the administrative hearing decision, S.T.'s right to counsel, S.T.'s ability to recover costs or damages, and S.T.'s constitutional claims. The Court of Appeals also followed well-settled law addressing an appellate court's review of a superior court's denial to seal a record or close the courtroom.

The Court of Appeals conducted its administrative review analysis under RCW 34.05.570 and properly relied on and applied prior precedent.

The Court of Appeals correctly noted that it sits in the same position as the superior court in review of the ALJ's decision and reviews the agency's application of the law and constitutional questions de novo. *Karanjah v. DSHS*, 199 Wn. App. 903, 914, 401 P.3d 381 (2017); *Cornelius v. Dep't of Ecology*, 182 Wn.2d 574, 585, 344 P.3d 199 (2015).

The Court of Appeals also properly applied an abuse of discretion standard in analyzing the superior court's decision on sealing the case, finding that it had correctly applied the five-factor test articulated in *Ishikawa. Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 640 P.2d 716 (1982); *Hundtofte v. Encarnación*, 181 Wn.2d 1, 7, 330 P.3d 168 (2014) (plurality); see also GR 15. The Court of Appeals also correctly determined that the superior court appropriately exercised its discretion under *Ishikawa* in allowing for redaction rather than full closure. *Ishikawa*, 97 Wn.2d at 37–39.

Finally, in denying S.T.'s request for costs or damages, the Court of Appeals' decision properly applied RCW 34.05.574(3), which only allows for an award of damages if expressly authorized by another provision of law.

S.T.'s petition contains no specific arguments demonstrating that the Court of Appeals' decision conflicts with a decision of this Court. Furthermore, S.T. does not cite to any decisions which would imply a

conflict or inconsistency exists. Consequently, there is no basis to grant review under RAP 13.4(b)(1).

Additionally, the Court of Appeals applied straightforward, well-settled case law in addressing S.T.'s claims. S.T.'s petition points to no published opinion of the Court of Appeals in conflict with this decision. Therefore, RAP 13.4(b)(2) also does not serve as a basis for review.

B. The Petition for Review Does Not Raise a Significant Question of Law under the Constitution of the United States or State of Washington or a Matter of Public Interest

S.T. raises constitutional issues involving DVR's closure of her case, the sealing of the court record, the courts' denials of counsel, and the general constitutionality of mental health laws. Beyond citing to constitutional amendments, S.T. fails to provide any legal authority or analysis to support these assertions and fails to show the existence of a significant question of law under the United States or Washington State Constitutions. Appellate courts should not be placed in a role of crafting issues for the parties; thus, mere " 'naked castings into the constitutional sea are not sufficient to command judicial consideration and discussion.' " *Matter of Rhem*, 188 Wn.2d 321, 328, 394 P.3d 367, 370–71 (2017), *reconsideration denied* (July 7, 2017) (quoting *In re Rosier*, 105 Wn.2d 606, 616, 717 P.2d 1353 (1986)). S.T.'s petition for review should be denied.

The Court of Appeals properly addressed her First Amendment claim. That court concluded that, based on the record, S.T.'s First Amendment rights were not implicated because, due to her refusal to participate in mental health services, it could not be determined that she was eligible for the public benefit. Applying *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2019, 2021, 198 L. Ed. 2d 551 (2017), the court properly concluded that the First Amendment was not implicated in this case. This established case law warrants no further review from this Court.

The appellate court also properly concluded that S.T.'s remaining constitutional claims were either inapplicable, insufficiently briefed, or S.T. lacked standing to raise the claims. RAP 10.3(a)(6); *See Bohn v. Cody*, 119 Wn.2d 357, 368, 832 P.2d 71 (1992) (appellate court will not consider inadequately briefed argument); *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (argument unsupported by citation to the record or authority will not be considered); *Norcon Builders, LLC v. GMP Homes VG, LLC*, 161 Wn. App. 474, 486, 254 P.3d 835 (2011) (“We will not consider an inadequately briefed argument.”). S.T.'s remaining constitutional claims do nothing more than name constitutional provisions with no support or analysis. S.T. fails to articulate how the determination of the inapplicability of constitutional provisions or her lack

of standing to challenge all mental health laws raises a significant question of law warranting a determination from the Court.

The issue of sealing a court record, while a significant question of constitutional magnitude, is firmly established. This Court has previously addressed the issue of sealing court records and set forth a test to be applied. *Ishikawa*, 97 Wn.2d 30; *Hundtofte*, 181 Wn.2d 1. No new issues are raised here; the constitutional question is well settled and the Court of Appeals correctly applied the relevant legal test.

Relatedly, although the constitutional provisions relied upon by S.T. are certainly matters of public interest, they are so clearly inapplicable in the instant case as to warrant no consideration by this Court. As noted above, S.T.'s petition for review includes multiple allegations of constitutional violations, but fails to mount any legitimate challenge to the sufficiency of the appellate court's ruling regarding these constitutional allegations, and does not address why any rise to the level of Supreme Court review.

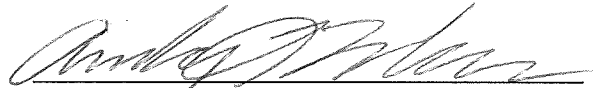
S.T. has failed to address why any of the issues she raises are significant questions of law under the United States or Washington State Constitutions or present a significant public interest. S.T. does little more than identify constitutional amendments she believes are being violated. This Court has issued opinions on similar questions and S.T. presents no

unsettled issues for this Court's review. No significant questions remain. S.T.'s petition fails to establish a basis for review under RAP 13.4(b)(3) or (4) and should be denied.

V. CONCLUSION

S.T. has failed to demonstrate sufficient grounds to warrant review by this Court under RAP 13.4 on any of the enumerated issues. Accordingly, her petition for review should be denied.

RESPECTFULLY SUBMITTED this 17th day of December, 2018.



AMBER L. LEADERS, WSBA No. 44421
BRETT M. JETTE, WSBA No. 47903
Assistant Attorneys General

Attorneys for Respondent
PO Box 40124
Olympia, WA 98504-0124
Telephone: (360) 586-6565
E-mail: AmberL1@atg.wa.gov

CERTIFICATE OF SERVICE


I, *Beverly Cox*, state and declare as follows:

I am a citizen of the United States of America and over the age of 18 years and I am competent to testify to the matters set forth herein.

I certify that on December 17, 2018, I served a true and correct copy of this **RESPONDENT'S ANSWER TO PETITION FOR REVIEW** and this **CERTIFICATE OF SERVICE** by e-mailing an electronic copy to Appellant.

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

Dated this 17th day of December 2018, at Tumwater, Washington.



BEVERLY COX
Legal Assistant

SOCIAL AND HEALTH SERVICES DIVISION, ATTORNEY GENERALS OFFICE

December 17, 2018 - 4:19 PM

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