

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

In the Matter of the Detention of)	No. 74770-3-I
GREGORY COLEY,)	
)	
Appellant.)	
_____)	
STATE OF WASHINGTON,)	
)	
Respondent,)	UNPUBLISHED OPINION
v.)	FILED: October 21, 2019
GREGORY COLEY,)	
)	
Appellant.)	
_____)	

VERELLEN, J. — Gregory Coley appealed the commitment order entered following a sexually violent predator (SVP) unconditional release trial and raised a challenge to jury selection under Batson v. Kentucky.¹ On October 16, 2017, this court affirmed the trial court's denial of the Batson challenge.² The State Supreme Court ultimately granted Coley's petition for review and remanded to this court for reconsideration in light of State v. Jefferson.³

¹ 476 U.S. 79, 106 S. Ct. 1712, 90 L. Ed. 2d 69 (1986).

² 200 Wn. App. 1067, 2017 WL 4640320 (2017).

³ 192 Wn.2d 225, 429 P.3d 467 (2018).

In the meantime, in early 2019, Coley was convicted of a crime and sentenced to 41 months of imprisonment.

In supplemental briefing, the State concedes the “record is insufficient to properly apply the new test” from Jefferson.⁴ Because Coley is serving a term of imprisonment, the State proposes this matter should be reversed and remanded “for further proceedings rather than specifically remanded for a new trial. . . . [A] new trial may not be immediately required or called for.”⁵

In his supplemental reply brief, Coley agrees with the concession, but he seeks clarification of whether the 2002 stipulation to his SVP commitment remains in place on remand. Specifically, in exchange for Coley stipulating to commitment, the State agreed that Coley could waive the probable cause requirement mandated by RCW 71.09.090(2) for unconditional release or conditional release to a less restricted alternative on two occasions of his choice.⁶

The State has clarified:

[R]eversal of the commitment order should place Coley in the same position he was in before the commitment order. . . . If and when a retrial occurs on remand, it will count as Coley’s exercise of the first of the two waivers of the probable cause requirement, and he will have one remaining waiver. If the parties agree not to retry the case at this time, Coley will retain the right to a waiver of the probable cause requirement on two occasions of his choice.^[7]

⁴ Resp’t’s Second Supp’l Br. at 1.

⁵ Id. at 12.

⁶ Clerk’s Papers at 254.

⁷ Resp’t’s Resp. to Second Supp’l Reply Br. of App. at 2.

We accept the State's concession. Therefore, we reverse and remand for further proceedings consistent with this opinion.

WE CONCUR:

Mann, ACT.

[Signature]

[Signature]