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Washington State
Court of Appeals
Division Two

May 12, 2020

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In the Matter of the Detention of: MICHAEL CANTY, Petitioner,	No. 51826-1-II UNPUBLISHED OPINION

LEE, C.J. — Michael Canty was civilly committed as a sexually violent predator (SVP). Canty appeals the superior court's order denying his petition for conditional release to a less restrictive alternative (LRA) because it was filed prior to Canty's first annual review. However, after this appeal was filed, Canty was released to an LRA. Because Canty has already received the relief requested, and our Supreme Court has already decided the issue of law presented here, Canty's appeal is moot. Accordingly, we dismiss Canty's appeal.

FACTS

In August 2016, the State petitioned to have Canty civilly committed as an SVP. In June 2017, the superior court entered an order committing him as an SVP.

In December 2017, Canty petitioned for conditional release to an LRA. Canty filed a proposed LRA plan with his petition. Canty also completed a psychological evaluation that recommended that he be conditionally released to an LRA. In March 2018, Canty filed an updated proposed LRA plan. The State requested that the superior court deny Canty's petition because the petition for an LRA was filed prior to Canty's first annual review.

The superior court concluded that it did not have statutory authority to grant Canty's petition until Canty's first annual review was completed. The superior court denied Canty's petition for release to an LRA.

In April 2018, Canty filed a notice of appeal to this court. In June 2018, while Canty's appeal was pending, Canty noted a show cause hearing for conditional release to an LRA. The superior court ordered a trial on Canty's June petition for conditional release to an LRA. Following the trial, the superior court granted Canty conditional release to an LRA.

Canty appeals the superior court's order denying his December 2017 petition for release to an LRA.

ANALYSIS

The State argues that Canty's appeal is moot because Canty has now been conditionally released to an LRA. Because Canty has already received the relief requested and the issue of whether an SVP can petition for release to an LRA has already been settled by our Supreme Court, Canty has not presented an issue of continuing and substantial public interest. Accordingly, we dismiss this case as moot. RAP 18.9(c) (appellate court will dismiss review of a case if it is moot).

When an appellant has already obtained the requested relief, an appeal is technically moot. *In re Det. of Nelson*, 2 Wn. App. 2d 621, 628, 411 P.3d 412, *review denied*, 190 Wn.2d 1029 (2018). However, we may review a case that is moot "'if it presents issues of continuing and substantial public interest.'" *Id.* (quoting *In re Marriage of Homer*, 151 Wn.2d 884, 891, 93 P.3d 124 (2004)). In determining whether a case presents an issue of continuing and substantial public interest, this court considers (1) the public or private nature of the issue, (2) whether guidance to

public officers on the issue is desirable, and (3) the likelihood that the issue will recur. *State v. Cruz*, 189 Wn.2d 588, 598, 404 P.3d 70 (2017).

Here, this is a public issue because the civil commitment of SVPs is a government function that is meant to serve the legitimate state objectives of "providing treatment specific to SVPs and protecting society from the heightened risk of sexual violence they present." *In re Det. of Thorell*, 149 Wn.2d 724, 750, 72 P.3d 708 (2003), *cert. denied*, 541 U.S. 990 (2004). Therefore, whether an SVP can petition for conditional release to an LRA is an issue of a public nature.

However, guidance on the issue is not necessary because our Supreme Court has already settled the relevant issue of law—whether the superior court can decide a petition for release to an LRA prior to the first annual review. Once our Supreme Court "has decided an issue of state law, that interpretation is binding on all lower courts" until it is overturned by our Supreme Court. *State v. Gore*, 101 Wn.2d 481, 487, 681 P.2d 227 (1984).

RCW 71.09.060(4) states, in relevant part, "A court has jurisdiction to order a less restrictive alternative placement only after a hearing ordered pursuant to RCW 71.09.090 following initial commitment." In *Thorell*, our Supreme Court stated,

> The [Sexually Violent Predator Act] SVPA restricts the court, however, from ordering an LRA prior to a hearing under the annual LRA review provision, RCW 71.09.090, following initial commitment. RCW 71.09.060(4). Because of this restriction on the trial court, those who meet the statutory definition and are committed as SVPs are not entitled to consideration of LRAs until their first annual review.

149 Wn.2d at 751. This is the Supreme Court's express statement of the law regarding whether the trial court is permitted to consider and order an LRA under chapter 71.09 RCW. Because the

Supreme Court's statement of the law is clear, we consider it binding until the Supreme Court overturns it. *Gore*, 101 Wn.2d at 487.

Canty argues that the Supreme Court's statement in *Thorell* is dicta and is not binding on this court. "A statement is dicta when it is not necessary to the court's decision in a case." *Protect the Peninsula's Future v. City of Port Angeles*, 175 Wn. App. 201, 215, 304 P.3d 914, *review denied*, 178 Wn.2d 1022 (2013). "Dicta is not binding authority." *Id.*

In *Thorell*, the Supreme Court addressed whether chapter 71.09 RCW, relating to sexually violent predators, violated equal protection "because it prohibits consideration of LRAs at the initial commitment trial when chapter 71.05 RCW [governing involuntary commitment for mental illness] does allow consideration of LRAs at initial commitment." 149 Wn.2d at 751. In determining whether equal protection was violated, the Supreme Court had to define how consideration of LRAs are treated under both chapter 71.09 RCW and chapter 71.05 RCW. *Id.* Thus, the Supreme Court's statement as to whether the SVPA statute allows a court to order an LRA was necessary to the issue that was being decided because the Supreme Court was defining the law it was going to rely on in order to perform its analysis. *Id*. Therefore, the Supreme Court's statement is not dicta and is binding on this court.

Canty also argues that the Supreme Court in *Thorell* did not engage in statutory interpretation and its statement is undermined by its "free use" of the word annual. Br. of Appellant at 13. However, those are arguments that are more properly directed to the Supreme Court as reasons why the statement in *Thorell* should be overturned. *See In re Pers. Restraint of Yates*, 183 Wn.2d 572, 577, 353 P.3d 1283 (2015) ("'[The Supreme Court] will not overturn prior precedent unless there has been 'a clear showing that an established rule is incorrect and

harmful.'") (internal quotation marks omitted) (quoting *W.G. Clark Constr. Co. v. Pac Nw. Reg'l Council of Carpenters*, 180 Wn.2d 54, 66, 322 P.3d 1207 (2014). Therefore, while Canty's arguments may persuade the Supreme Court to overturn its statement in *Thorell*, we have no authority to do so. *Gore*, 101 Wn.2d at 487.

We accept our Supreme Court's statement of the law and because the issue of law presented here has been settled by our Supreme Court, additional guidance from this court is unnecessary. Furthermore, because this issue of law has been settled, it is not likely to recur because the superior courts have well-settled law from our Supreme Court on whether they have authority to order an LRA prior to the first annual review. Therefore, Canty has not raised an issue of continuing and substantial public interest, and his appeal is moot. Accordingly, we dismiss Canty's appeal.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Lee, C.J.

We concur:

Worswick, J.

Sutton, J.