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Court of Appeals
Division III
State of Washington

NO. 27419-5

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

In re the Detention of John Lawrence Robinson,,

Appellant,

v.

STATE OF WASHINGTON,

Respondent.

RESPONDENT'S OPENING BRIEF

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I. INTRODUCTION

This appeal arises from an order entered in 2008 denying Appellant John Robinson's request for a new trial pursuant to RCW 71.09.090, which relates to post-commitment review of persons committed as sexually violent predators. Robinson's entire argument is predicated on an order entered in 2010, two years after entry of the order from which he seeks review. That 2010 order has, however, itself been superseded by an order entered in April of 2013. As such, his brief presents no issues to which the State can respond. This Court should affirm the trial court's 2008 order denying his request for a new trial.

II. STATEMENT OF THE CASE

On March 3, 2006, following a lengthy bench trial, the trial court entered an order committing John Robinson as a sexually violent predator (SVP). His commitment was affirmed by this Court in an unpublished decision. 152 Wn. App. 1037, 2009 WL 3172797 (2009).

Pursuant to RCW 71.09.070, a person committed as a sexually violent predator (SVP) is entitled to an examination, or "annual review," of his or her mental condition every year and, if he or she elects, a hearing on the question of whether there are grounds for continued detention. In August of 2007, and pursuant to RCW 71.09.090, the State filed a Motion to Show Cause, supported by an annual review by professional staff at the

Special Commitment Center.[1] CP at 1-61. The report states that Robinson continues to suffer from a mental abnormality and/or personality disorder that makes him likely to commit predatory acts of sexual violence if not confined to a secure facility. CP at 2-61. In response, Robinson moved for a new trial, submitting numerous materials, including journal articles and declarations from various psychologists, in support of his motion. CP at 64-103; 1706-07.[2] He also moved to "set aside" the original order of commitment pursuant to CR 60(b) (CP at 685-88), and submitted briefing arguing that the 2005 amendments to RCW 71.09.090 were unconstitutional on various grounds.

Following a contested hearing the trial court, on August 15, 2008, entered an order denying Robinson's request for a new trial and rejecting his arguments relating to the constitutionality of the 2005 amendments. CP at 1695-1707. The court, *inter alia*, found that "Dr. Wollert's[3] declarations do not discuss or identify any 'substantial change' Respondent has undergone due to treatment" and that "the vast majority of the 'evidence' now offered by Respondent on these topics was presented in some form at

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[1] The Special Commitment Center is a DSHS-run treatment facility where persons detained pursuant to RCW 71.09 are housed.

[2] These materials were very extensive, and, because they are not directly relevant to this appeal, are not listed individually here. The materials considered by the trial court were attached to the trial court's order and are listed at CP 1706-07.

[3] Dr. Wollert, in addition to having been one of Robinson's trial experts, submitted many of the declarations in support of Robinson's motion(s) for a new trial.

his initial commitment trial. None of this information relates to the required change in physical or mental condition a required by RCW 71.09.090." CP at 1697. Robinson timely appealed.

On December 11, 2008, on motion of the State, this Court issued a Ruling staying this appeal pending a final resolution of *In re McCuistion*, WSSC No. 81644-1, in which the Washington State Supreme Court would consider the constitutionality of the 2005 amendments to RCW 71.09.090. The initial opinion issued in that case declared the 2005 amendments unconstitutional. *In re McCuistion,* 169 Wn.2d 633, 238 P.3d 1147 (2010). The State Supreme Court subsequently granted the State's motion to reconsider that opinion, withdrew the 2010 decision and, on May 3, 2012, issued a new opinion, this time upholding the constitutionality of the 2005 statutory amendments. *In re McCuistion*, 174 Wn.2d 369, 275 P.3d 1092 (2012). Following issuance of the mandate in *McCuistion*, this Court lifted its December 11, 2008 stay and, on February 16, 2013, Robinson filed his Opening Brief in this matter.

The only issue identified in Robinson's Opening Brief is whether the appeal "is moot under the facts and circumstances presented." App. Br. at 1. The reference to "facts and circumstances" relates to events that transpired after the entry of the trial court's August 15, 2008 order: In 2010, the State submitted its 2010 annual review by professional staff at

the Special Commitment Center. Robinson again requested a new trial and, on November 10, 2010, the trial court granted his request. CP at 2043-50; Br. of App. at 3. On August 26, 2011, again on motion of the State, the trial court stayed further proceedings related to the November 10, 2010 order pending final resolution of *McCuistion*. CP at 2194; Br. of App. at 3.

As required by statute, Robinson's condition continued to be reviewed and reported upon on a yearly basis, and orders continuing his commitment were entered pursuant to both the 2011 and the 2012 annual reviews were entered. CP at 2293-2294; CP at 2295-2297.

On February 22, 2013, the State filed a motion asking the trial court to lift its August 26, 2011 stay and to once again consider the pleadings filed pursuant to the 2010 report on Robinson's mental condition, this time in light of the final decision in *McCuistion*.[4] Supp. CP at _____.[5] The matter was scheduled for a hearing on April 12, 2013. On that date, the parties submitted an agreed order concluding 1) that the State had made a *prima facie* case for continued confinement based on the

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[4] The title of the document is Petitioner's Motion To Lift Stay, Deny Respondent's Demand For Evidentiary Hearing And Continue Commitment And Memorandum In Support Thereof, Sub No. 587. Supp. CP at _____.

[5] The document referenced is the State's Motion to Lift Stay, Deny Respondent's Demand for Evidentiary Hearing and Continue Commitment And Memorandum In support Thereof. It has not yet been assigned a clerk's papers number by the Yakima County Clerk's Office.

2010 report by professional staff at the SCC; 2) that Robinson had not shown probable cause for a new trial; and 3) ordering Robinson's continued commitment. Supp. CP at _____.[6]

III. ARGUMENT

Robinson's Opening Brief appears to suggest that any appeal of the August 15, 2008 order denying his request for a new trial is moot based on the trial court's order of November 10, 2010, granting a new trial. By way of relief, he asks only that this Court instruct the trial court to set the matter for trial. Because the November 10, 2010 order has been superseded by entry of the April, 2013 order finding no basis for a new trial, and because Robinson's brief presents no other issues to which the State can respond, this appeal should be denied and the trial court's August 15, 2008 order affirmed.

In light of the entry of the April, 2013 order determining that there is no basis for a new trial, this case has clearly not been rendered moot on the basis of the now-superseded November 10, 2010 order. Even assuming that the order of August 15, 2008 is not moot, however, Robinson's brief presents no issues to which the State can respond. The only other issues raised by Robinson are assignments of error to Finding

[6] The document referenced is the Order Lifting Stay And Denying Respondent's 2010 Demand for Evidentiary Hearing (Agreed). It was entered on or around April 17, 2013. No Sub Number has been assigned yet.

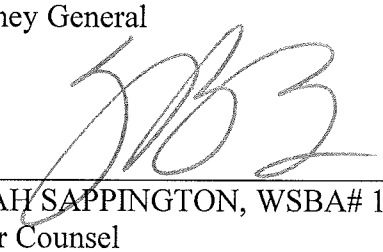
of Fact No. 5 and Conclusions of Law 4, 5 and 6 which, Robinson argues, "are not supported by the underlying factual findings." App. Br. at 6. It is unclear what is meant by this assertion and Robinson does not offer any argument or citations to the record in support thereof. Passing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration. *State v. Johnson,* 119 Wn.2d 167, 171, 829, P.2d 1082 (1992). As such, this Court should decline to consider them. RAP 10.3(6).

IV. CONCLUSION

Because Robinson raises no issues to which the State can respond or on which this Court can rule, the State respectfully requests that the Court deny his appeal and affirm the trial court's August 15, 2008 order denying his request for a new trial

RESPECTFULLY SUBMITTED this 22nd day of April, 2013.

ROBERT W. FERGUSON
Attorney General



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NO. 27419-5-III

WASHINGTON STATE COURT OF APPEALS, DIVISION III

In re the Detention of: JOHN ROBINSON	DECLARATION OF SERVICE

I, Allison Martin, declare as follows:

On April 22, 2013, I deposited in the United States mail true and correct cop(ies) of Respondent's Opening Brief and Declaration of Service, postage affixed, addressed as follows:

Dennis Morgan
PO Box 1019
Republic, WA 99166

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

DATED this 22nd day of April, 2013, at Seattle, Washington.

Allison Martin

ALLISON MARTIN