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Division III
State of Washington

NO. 32396-0

**COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON**

In re the Detention of Anthony Rushton:

STATE OF WASHINGTON,

Appellant,

v.

ANTHONY RUSHTON,

Respondent.

APPELLANT'S OPENING BRIEF

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I. INTRODUCTION

The trial court erred by unconditionally releasing Anthony Rushton into the community and its order conflicts with the Legislature's intent in RCW 71.09 to protect the public from sexually violent predators (SVP). At the hearing on Rushton's motion to dismiss the SVP petition, a recent psychological evaluation established that Rushton suffers from pedophilia, a rape disorder, sexual sadism, and antisocial personality disorder. It also concluded he is likely to commit a predatory, sexually violent offense if released. Rushton continues to disclose his violent sexual fantasies of anally raping his mother.

Rushton presented no evidence and instead argued that, because the State's annual review was filed three months after the anniversary of his commitment, the State had violated his procedural and substantive due process rights because he was not evaluated "at least once a year." The trial court concluded that the State had violated Rushton's procedural due process rights and ordered his unconditional release.

The trial court erred because a minimal delay in completing a complex evaluation analyzing many pages of discovery, clinical interviews, psychological tests and other information does not constitute a constitutional violation necessitating the unconditional release of an SVP into the community. Even a total failure by the State to produce an annual

review can only result in an unconditional release trial. The trial court's order should be reversed, and Rushton's indefinite confinement should continue until he no longer meets the SVP commitment criteria.

II. ASSIGNMENTS OF ERROR

1. The trial court erred by finding that "Respondent did not have a current examination of his mental condition 'at least once a year'." Finding of Fact No. 13.

2. The trial court erred by concluding that "The eventual filing of the 2013 evaluation, at least three months beyond the 'at least once a year' requirement, does not preclude this Court's grant of the relief requested by Respondent." Conclusion of Law No. 6.

3. The trial court erred by concluding that "The budgetary and/or staffing concerns at the Special Commitment Center outlined on the Declaration of Steven Marquez, Ph.D. do not excuse the lapse of more than one year between evaluations." Conclusion of Law No. 7.

4. The trial court erred by concluding that "Respondent's liberty interest is directly affected by a late evaluation to an extent that violates Respondent's due process rights." Conclusion of Law No. 8.

5. The trial court erred by ordering the dismissal of the State's sexually violent predator petition.

6. The trial court erred by ordering that Rushton be unconditionally released from confinement as a sexually violent predator.

III. STATEMENT OF THE CASE

A. Procedural History

The State petitioned to civilly commit Rushton as a sexually violent predator (SVP) in September 1999. CP at 1-3. Rushton stipulated that he was an SVP and was civilly committed to the Special Commitment Center (SCC) on November 5, 2000. CP at 4-12. On February 16, 2014, the SCC evaluator, Harry Hoberman, Ph.D., completed Rushton's latest annual review report. CP at 254. The report was then submitted to the Spokane County Superior Court, pursuant to RCW 71.09.070(1). CP at 251-324. In between the dates when Dr. Hoberman completed the current annual review and the SCC submitted it to the trial court, Rushton filed a Motion to Dismiss with a Memorandum of Law in Support of Motion to Dismiss. CP at 244-50. He argued that his current annual review had not been filed and the failure to do so violated his substantive due process rights. CP at 245-50. Rushton moved the trial court to dismiss the SVP petition or, in the alternative, order a release trial. CP at 244.

The State filed its Petitioner's Response to Respondent's Motion to Dismiss on March 3, 2014, opposing dismissal or a new trial.

CP at 325-37. The State chronicled the history of Rushton's annual reviews, which had occurred yearly. CP at 325-27. Rushton filed a reply. CP at 338-410.

The Honorable Michael P. Price heard Rushton's motion on March 21, 2014. CP at 411. The court found that Dr. Hoberman's annual review was completed 15 months after the anniversary date of Rushton's civil commitment. CP at 412. The court concluded that an annual evaluation completed three months after the commitment anniversary date violated Rushton's due process rights. CP at 413. The court ordered that the SVP petition be dismissed and that Rushton be unconditionally released. CP at 414. On its own motion the court stayed execution of its order for 45 days. *Id.*

The State timely appealed. CP at 415-19. On May 16, 2014, Commissioner Monica Wasson granted the State's motion to stay the trial court's order pending completion of this appeal. App. 1.¹

B. Factual Background

Rushton's criminal sexual history includes convictions for rape of a child first degree and rape second degree. CP at 7-9. In 1989, when he was 16 years old, Rushton anally and orally raped nine-year-old twin boys multiple times over several months. CP at 7-8, 285. He pled guilty to one

¹ Appendix 1 is a true and correct copy of the May 16, 2014 Commissioner's Ruling staying the trial court's order.

count of rape of a child first degree and was sentenced to 30 days of confinement and 12 months of community supervision. CP at 8. After his release Rushton participated in community-based sex offender treatment. CP at 288.

In February 1994, 20-year-old Rushton raped a 17-year-old female acquaintance. CP at 8-9. He followed her home and forced his way into her house. CP at 8. Inside, he grabbed her, pushed her to the floor, pulled her clothes off and digitally raped her. CP at 8-9. He left after the victim's brother came home. CP at 9. Rushton pled guilty to rape second degree and was sentenced to 67 months. *Id.*

Rushton eventually disclosed a more lengthy and significant history of rapes and molestations, beginning as early as his age of eight. CP at 287. His victims included neighborhood children, a teenage girl and his mother's friend. *Id.*

While incarcerated for rape second degree, Rushton participated in sex offender treatment. CP at 288. Penile plethysmograph testing indicated Rushton had 100% sexual arousal to the following stimuli: Adult female consent; rape adult female, humiliation rape adult female, and sadistic rape adult female. *Id.* He was also reported to have shown high arousal to rape and humiliation of children of both genders. *Id.* Rushton was released from prison on February 16, 1999. *Id.*

Within weeks of his release, Rushton violated his parole and was arrested. CP at 286. He admitted that, had he remained in the community, he would have committed a violent rape:

He later confessed to a polygrapher that he had been fantasizing about violent rapes and had "cruised" by one high school and two elementary schools on several occasions while on release. Mr. Rushton stated he would masturbate afterwards to fantasies of raping preteen girls. He admitted that if he had not been arrested, he would have violently raped a female within weeks.

Id.

Rushton was returned to prison and reentered sexual offender treatment in May 1999. CP at 288. He reported "sexual arousal and daily fantasies of physically violent rapes of teenage girls." *Id.* He disclosed having planned abductions and rapes while in the community and his disclosures were "graphic and detailed." *Id.* When Rushton disclosed his fantasy of violently anally raping his mother, and masturbation thereto, trailer visits with his mother were discontinued for her safety. *Id.*

In his stipulation to civil commitment as an SVP in November 2000, Rushton agreed that he suffered from pedophilia, paraphilia not otherwise specified, nonconsent (a rape disorder) and antisocial personality disorder. CP at 11. Rushton's latest evaluation – which was before the trial court at the hearing on his motion to dismiss – concluded that he continues to meet the criteria for civil commitment. CP at 280-81.

His current diagnoses include the diagnoses he stipulated to in 2000 and a diagnosis of sexual sadism. CP at 270. A review of Rushton’s treatment participation in the previous year indicates that he has increased his efforts but “has problems completing assignments” and “still has a number of significant areas . . . that represent ongoing issues for the resident.” CP at 257. For example, in March 2013, he disclosed continuing fantasies of anal sex with his mother and admitted he could not be alone with her. CP at 256. The following month he reported an increase in these fantasies that appeared stress-related. *Id.* His anal rape fantasies about his mother continued in 2013; Rushton reported that they periodically “popped up” in his mind. CP at 257.

IV. ARGUMENT

A. The Trial Court Erred Because The SVP Statute Provides For Rushton’s Indefinite Confinement Until A Fact-Finder Determines That He Is No Longer Mentally Ill And Dangerous

The trial court’s unprecedented order releasing Rushton into the community despite evidence that he is currently mentally ill and dangerous violates the statutory release procedures of RCW 71.09.090. The Legislature’s intent in those procedures is clear because it provided for release only through a factual determination that the person is no longer an SVP. Even where the State fails to produce any evidence at an annual show cause hearing, the remedy – absent a voluntary dismissal of

the petition accepted by the trial court – is a full evidentiary hearing at which the State must again prove beyond a reasonable doubt that the person is an SVP. There are no provisions for summary dismissal of the petition and the trial court erred when it ordered Rushton’s release to the community.

1. Standard of Review

Neither Rushton nor the trial court cited authority for dismissing an SVP petition for an allegedly late annual review and the State is unaware of any. The nearest analogy is perhaps a motion for summary judgment. Rulings on summary judgment motions are reviewed de novo. *In re Detention of Danforth*, 153 Wn. App. 833, 841, 223 P.3d 1241 (2009).

2. There is No Authority Supporting the Trial Court’s Order Dismissing the SVP Petition

There is no authority, statutory or otherwise, to release a civilly committed SVP, absent a showing that he no longer meets the criteria for civil commitment.² Rushton was committed to the custody of DSHS for placement in a secure facility:

² A sexually violent predator is a person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility. RCW 71.09.020(18). “Likely to engage...” means that the person more probably than not will engage in such acts if unconditionally released. RCW 71.09.020(7).

for control, care, and treatment until such time as: (a) The person's condition has so changed that the person no longer meets the definition of a sexually violent predator; or (b) conditional release to a less restrictive alternative as set forth in RCW 71.09.092 is in the best interest of the person and conditions can be imposed that would adequately protect the community.

RCW 71.09.060(1). The Legislature specifically found that the SVP population is extremely dangerous and their treatment needs are very long-term, implying the statute contemplates a prolonged period of treatment. RCW 71.09.010; *In re Petersen*, 138 Wn.2d 70, 78, 980 P.2d 1204 (1999) (*Petersen I*). The statute involves indefinite commitment, “not a series of fixed one-year terms with continued commitment having to be justified beyond a reasonable doubt *annually* at evidentiary hearings where the State bears the burden of proof.” *Id.* at 81 (emphasis in original).

Annually, the State bears the burden to present prima facie evidence that the person continues to meet the definition of an SVP and that conditional release to a less restrictive alternative would not be appropriate. RCW 71.09.090(2)(c); *State v. McCuiston*, 174 Wn.2d 369, 380, 275 P.3d 1092, 1100 (2012) *cert. denied*, 133 S. Ct. 1460, 185 L. Ed. 2d 368 (2013). The State may rely on the DSHS annual review to satisfy this burden. RCW 71.09.090(2)(b). If the State cannot or does not prove this prima facie case, there is probable cause to believe continued

confinement is not warranted and the matter must be set for a trial. RCW 71.09.090(2)(c); *In re Detention of Petersen*, 145 Wn.2d 789, 798, 42 P.3d 952 (2002) (*Petersen II*).

Consequently, even assuming that the State had not completed an annual review or had failed to present evidence at the March 21st hearing on Rushton's motion, the trial court only had authority to order a release trial. But the State did present evidence, and that evidence demonstrated that Rushton continues to meet the commitment criteria. CP at 280-81. The trial court's order releasing Rushton to the community is unsupported by any legal authority and should be reversed.

B. The Trial Court's Finding and Conclusions That The Annual Review Was Late And Violated Rushton's Due Process Rights Are Erroneous Because The Statute Does Not Require That The Evaluation Be Filed On The Commitment Anniversary

The trial court's order is based on its erroneous assumption that the Legislature required annual review evaluations to be filed by the anniversary date of the commitment. However, interpretation of RCW 71.09.070 in the context of the entire statute and the constitutional requirement of "periodic review" is contrary to the trial court's findings, conclusions and order. Unlike other provisions of the statute, the Legislature declined to specify a specific date or time period by which the report must be submitted, instead requiring it be produced "at least once

every year.” The Legislature’s decision to forego specifying a due date recognized that the process of gathering voluminous information, clinically interviewing the person, and writing a report that covers a period of one year would be frustrated by a hard and fast deadline.

1. The Constitutional Requirement for Review of Rushton’s Mental Condition is “Periodic Review” and the Statutory Requirement is “Once Every Year”

The constitutional requirement for revisiting the basis of commitment is “periodic review:” “Substantive due process requires only that the State conduct periodic review of the patient’s suitability for release.” *McCustion*, 174 Wn.2d at 385 (citing *Jones v. United States*, 463 U.S. 354, 368, 103 S.Ct. 3043, 77 L.Ed.2d 694 (1983)).

Washington has statutorily provided protections meeting the constitutional requirement of “periodic review,” by requiring the filing of an “annual report.” RCW 71.09.070(1).³ DSHS files the annual report

³ RCW 71.09.070(1) provides as follows:

(1) Each person committed under this chapter shall have a current examination of his or her mental condition made by the department of social and health services at least once every year. The annual report shall include consideration of whether the committed person currently meets the definition of a sexually violent predator and whether conditional release to a less restrictive alternative is in the best interest of the person and conditions can be imposed that would adequately protect the community. The department of social and health services shall file this periodic report with the court that committed the person under this chapter. The report shall be in the form of a declaration or certification in compliance with the requirements of RCW 9A.72.085 and shall be prepared by a professionally qualified person as defined by rules adopted by the secretary. A copy of the report shall be served on the prosecuting agency involved in the initial commitment and upon the committed person and his or her counsel. The committed person may retain, or if he or she is indigent and so requests, the court may

with the superior court. *Id.* The annual report provides the periodic evidence upon which the State may rely if the committed person challenges his detention at an annual review hearing. RCW 71.09.090(2)(b) (“In making this showing, the state may rely exclusively upon the annual report prepared pursuant to RCW 71.09.070.”).

2. The Trial Court Incorrectly Interpreted the Statute as Requiring an Annual Review by the Anniversary Date

The trial court found that Rushton “did not have a current examination of his mental condition ‘at least once a year’.” CP at 413 (Finding of Fact No. 13). This finding, and the conclusions of law based on it, are erroneous, first because they are contrary to the legislative intent in RCW 71.09, and second because they incorrectly assume that the Legislature required the annual review be produced by the commitment anniversary date.

When interpreting a statute the fundamental objective is to ascertain and carry out the legislature's intent. *In re Detention of Mines*, 165 Wn. App. 112, 120, 266 P.3d 242 (2011). “The primary purpose of chapter 71.09 RCW is to protect the public.” *In re Detention of Kistenmacher*, 163 Wn.2d 166, 173, 178 P.3d 949 (2008) (citing

appoint a qualified expert or a professional person to examine him or her, and such expert or professional person shall have access to all records concerning the person.

RCW 71.09.010). Here, the trial court's interpretation – that the legislature intended release of an SVP into the community if an annual review evaluation was not completed by the commitment anniversary date – is clearly contrary to legislative intent.

The Legislature did not so intend because the requirement that annual reviews be completed “at least once a year” lacks the specificity found elsewhere in the statute. For example, in the following statutory provisions, the Legislature provided exacting time periods: RCW 71.09.025 (SVP referral shall occur “three months prior to” release); RCW 71.09.040 (providing for 72-hour hearing and discovery to be provided “within 24 hours”); RCW 71.09.050(1) (right to trial “[w]ithin forty-five days”); RCW 71.09.060(1) (retrial “within forty-five days”); RCW 71.09.080(7) (release “within twenty-four hours” of service of release order); and RCW 71.09.090 (release trial to be set “within forty-five days”).

By providing specific time periods elsewhere in the statute, but not in RCW 71.09.070(1), the legislature showed its intent to not require a specific due date for the annual review beyond “at least once every year.” That phrase and the companion term “annual report” in RCW 71.09.070(1) belie the precision required by the trial court. *See In re Detention of Hawkins*, 169 Wn.2d 796, 803-804, 238 P.3d 1175

(2010) (legislative provision for polygraph testing in post-commitment but not pre-commitment phases demonstrates its intent that such testing cannot be ordered during the latter phase).

The “annual report” referenced in RCW 71.09.070(1) cannot be due on the anniversary date of the commitment because at the expiration of the review period the psychologist conducting the evaluation must gather extensive information, interview the person and/or others, analyze the data, arrive at diagnoses, assess the person’s risk to sexually recidivate and then produce a lengthy report. That is what occurred in this case:

At the Special Commitment Center, the annual review of a resident's treatment progress is a multidisciplinary process in which clinical information is synthesized from multiple data sources. Previous evaluations are reviewed, especially those conducted pursuant to RCW 71.09.040(4). The evaluation includes a review of treatment participation and progress in order to determine whether the resident's risk for criminal sexual acts has been mitigated through sex offender treatment. Documentation and clinical impressions on the extent and quality of the resident's involvement in activities such as sex offender group therapy, psycho-educational classes, and individual therapy are also reviewed. The evaluator discusses treatment progress with the resident and discusses the resident's progress with other SCC staff. The resident is given the opportunity to participate in a clinical interview to assess his mental condition and answer questions about his experience and perceptions of his sex offender treatment.

CP at 254.

The trial court erred in Finding of Fact No. 13 because Rushton received an annual report. CP at 413. “Annual” has been defined as:

Of or pertaining to year; returning every year; coming or happening yearly. Occurring or recurring once in each year; continuing for the period of a year; accruing within the space of a year; relating to or covering the events or affairs of a year. *Once a year, without signifying what time in year. See Annually.*

Black’s Law Dictionary 82 (5th ed. 1979) (emphasis added).⁴

While the trial court found that Rushton’s annual review was late and violated his right to procedural due process, “annual” indicates it was required once each year, “without signifying what time in year.” *See Phillips Petroleum Co. v. Harnly*, 348 S.W.2d 856, 860 (Tex.Civ.App. 1961) (“The word ‘annually’ means yearly or once a year, however the word itself does not signify what time in a year.”); *Sahlin v. American Cas. Co. of Reading, Pa.*, 436 P.2d 606, 609 (Ariz. 1968) (“annual” as used in insurance company brochure did not reference specific date because it does not signify what time in year) (quoting *Rolerson v. Standard Life Insurance Co.*, 244 S.W. 845, 846 (Tex.Civ.App. 1922)). *But see State v. Frickey*, 136 P.3d 558, 561 (Mont. 2006) (“annual” as used in administrative rule for breath test analysis machine certification means every 365 days).

⁴ In the event appellant’s counsel is portrayed as reaching back in time for a favorable definition, he informs the Court that he is old enough, or perhaps thrifty enough, that he does indeed have the 1979 Black’s Law Dictionary on his shelf.

Because the trial court erred by finding that Rushton did not have an annual review “at least once a year” (CP at 413, Finding of Fact No. 13), Conclusions of Law relying on that Finding are not supported. *State v. Ross*, 106 Wn. App. 876, 880, 26 P.3d 298 (2001). Thus, Conclusion of Law No. 6, concluding that the February, 2014 annual review did not preclude dismissal of the petition, was entered in error. This conclusion is also based on an error of law because the trial court had no authority to order the petition dismissed, even if no annual review had been submitted. At most, the court could order a release trial. RCW 71.09.090(2)(c) (providing that a trial is to be ordered if the State “has failed to present prima facie evidence . . .”). Conclusions of Law Nos. 7 and 8 are likewise unsupported by the Findings because they assume the annual review was due on the commitment anniversary date and provided late. CP at 413.

The trial court’s Finding that the annual review was late is not supported by the statute. Its conclusions are therefore not supported, either. The order should be reversed.

3. The Trial Court Erred in Concluding that Rushton’s Right to Procedural Due Process was Violated

The trial court concluded that Rushton’s “liberty interest is directly affected by a late evaluation to an extent that violates Respondent’s due

process rights.” Conclusion of Law No. 8. CP at 413. This was error. Assuming for the sake of argument that RCW 71.09.070(1) required that Rushton’s 2013 annual report be filed on Rushton’s commitment anniversary date, the failure to do so would be a statutory violation, not a violation of the constitutional requirement of “periodic review.” *McCuiston*, 174 Wn.2d at 385 (“Substantive due process requires only that the State conduct periodic review of the patient’s suitability for release.”) (citing *Jones*, 463 U.S. at 368).

Under the due process clause, an individual subject to civil commitment is entitled to release upon a showing that he is no longer mentally ill or dangerous. *Foucha v. Louisiana*, 504 U.S. 71, 77–78, 112 S.Ct. 1780, 118 L.Ed.2d 437 (1992). Because it is impossible to predict how long it will take for an individual to meet the standard for release, a commitment is indefinite and subject to “periodic review” of the patient’s suitability for release. *McCuiston*, 174 Wn.2d at 385. Once a fact-finder has determined that an individual meets the criteria for commitment as an SVP — that the person is mentally ill and dangerous — a reviewing court “accepts this initial conclusion as a verity in determining whether an individual is mentally ill and dangerous at a later date,” and any showing that he no longer satisfies commitment criteria “necessarily requires a showing of change.” *Id.*

Because due process “requires only that the State conduct periodic review of the patient’s suitability for release,” that standard is met where the State concludes from its annual review that the SVP continues to meet commitment criteria. *Id.* at 385-86. The show cause hearing, at which SVPs can challenge both the State’s prima facie case and present their own evidence of change, supplements this constitutional right to periodic review and is a purely statutory right, not a constitutional entitlement. *Id.* at 386, 389. Here, on the day the trial court ordered Rushton’s release, it had before it a detailed report that met the probable cause standard of RCW 71.09.090(2)(c) and satisfied the State’s annual burden. *See CP* at 251-324. Rushton presented no evidence. The trial court’s Conclusion of Law No. 8, which concluded that Rushton’s due process rights were violated, was clearly erroneous.

Because the State produced prima facie evidence and Rushton produced no evidence, he has not been prejudiced. Washington and Federal courts have held that procedural flaws do not constitute procedural due process violations absent a showing of prejudice. *See, e.g., Lang v. Washington State Dept. of Health*, 138 Wn. App. 235, 252, 156 P.3d 919 (2007) (citing *Motley-Motley, Inc. v. Pollution Control Hearings Bd.*, 127 Wn. App. 62, 81, 110 P.3d 812 (2005)); *In re Bush*, 164 Wn.2d 697, 706, 193 P.3d 103, 108 (2008); *Perry v. Blum*, 629 F.3d 1,

17 (1st Cir. 2010); *Graham v. Mukasey*, 519 F.3d 546, 550 (6th Cir. 2008); *U.S. Pipe and Foundry Co. v. Webb*, 595 F.2d 264, 275 (5th Cir. 1979); *U.S. v. Watson*, 314 F. Supp. 483, 490 (D.C. Mo. 1970). Given the State's detailed evidence showing he continued to meet SVP criteria, and no evidence whatsoever from Rushton, the trial court was without authority to even order a release trial under RCW 71.09.090.

Because any violation here was a statutory violation that was cured by the filing of the annual report in February 2014, and because Rushton can show no prejudice whatsoever, the trial court erred by concluding that there was a violation of Rushton's due process rights.

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I. CONCLUSION

RCW 71.09.090(2)(c) provides that, if the State fails to present evidence supporting an SVP's continued confinement, the trial court must set an evidentiary hearing. Here, the State presented prima facie evidence, but the court dismissed the petition and ordered Rushton's release to the community. The trial court's order violates the statute and is the antithesis of the legislative intent in RCW 71.09. "The primary purpose of chapter 71.09 RCW is to protect the public." *Kistenmacher*, 163 Wn.2d at 173. The order releasing Rushton should be reversed and this Court should conclude that the State met its annual prima facie burden through the February 2014 annual review evaluation.

RESPECTFULLY SUBMITTED this 15th day of September, 2014.

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APPENDIX 1

The Court of Appeals
of the
State of Washington
Division III

MAY 16 2014

In re the Detention of:) No. 32396-0-III
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)
ANTHONY RUSHTON.) COMMISSIONER'S RULING
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The State has appealed the Spokane County Superior Court's April 11, 2014 Order on Anthony Rushton's motion to dismiss the State's sexually violent predator petition. The superior court ordered Mr. Rushton unconditionally released from commitment under RCW 71.09. The superior court held that release was the appropriate remedy because the State had failed to evaluate Mr. Rushton for over a year. RCW 71.09.070(1) requires an annual review of a person's continued status as a sexually violent predator, and the United States Supreme Court has held that the right to due process requires periodic review of that status. *See Kansas v. Hendricks*, 521 U.S. 346, 373, 117 S. Ct. 2072, 138 L. Ed.2d 501 (1997).

A statutorily untimely evaluation, filed 16 months after the prior evaluation,

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concluded that Mr. Rushton continued to meet the criteria for civil commitment.

The superior court also stayed Mr. Rushton's release for 45 days to allow the State time to move this Court for a stay of the order of release, pending review of the State's appeal.

Pursuant to RAP 8.1(b)(3), the State now moves this Court to stay Mr. Rushton's release for the duration of the appeal. This Court agrees with the State that a stay is proper under the just-cited rule. The superior court's conclusion that Mr. Rushton's immediate release is the appropriate remedy for violation of the constitutional requirement of periodic review and the statute's requirement that the State evaluate him yearly, presents a debatable issue. In addition, the injury to the State if this Court denies a stay is greater than the injury to Mr. Rushton. The State risks the release of a man who has been found to be a sexually violent predator. Mr. Rushton's injury comes in the form of his continued commitment pending the appeal. While Mr. Rushton's injury is significant, it does not outweigh the State's interest. Accordingly,

IT IS ORDERED, the superior court's order for the release of Mr. Rushton is stayed pending this appeal.

May 16 , 2014



Monica Wasson
Commissioner

NO. 32396-0

**COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON**

In re the Detention of:

Anthony Rushton,

Respondent.

DECLARATION OF
SERVICE

I, Joslyn Wallenborn, declare as follows:

On September 15, 2014, I sent via electronic mail and regular USPS mail a true and correct copy of Appellant's Opening Brief and Declaration of Service, postage affixed, addressed as follows:

Eric Nielsen and Eric Broman
Nielsen, Broman, and Koch, PLLC
1908 East Madison Street
Seattle, WA 98122-2842
nielsene@nwattorney.net
bromane@nwattorney.net

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

DATED this 15th day of September, 2014, at Seattle, Washington.


JOSLYN WALLENBORN