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Supreme Court No. _____
(COA No. 56171-5-I)

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE: THE DETENTION OF ANDRE B. YOUNG,

STATE OF WASHINGTON,

Respondent,

v.

ANDRE B. YOUNG,

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

The Honorable Richard Jones

MOTION FOR DISCRETIONARY REVIEW

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TABLE OF CONTENTS

A. IDENTITY OF PETITIONER	1
B. COURT OF APPEALS DECISION.....	1
C. ISSUE PRESENTED FOR REVIEW	1
D. STATEMENT OF THE CASE	2
E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED	4
SINCE CIVIL RULES GOVERN CIVIL PROCEEDINGS, THE COURT IMPERMISSIBLY REFUSED TO APPLY CIVIL RULES CONTROLLING COMPELLED MENTAL EXAMINATIONS TO THE CIVIL SVP PROCEEDING IN THE CASE AT BAR	
1. The Court of Appeals decision is contrary to controlling Supreme Court case law	4
2. The trial court abused its authority by issuing a severely harsh contempt sanction	8
3. Substantial public interest favors review	12
F. CONCLUSION	12

TABLE OF AUTHORITIES

Washington Supreme Court Cases

In re Detention of Petersen, 145 Wn.2d 789, 42 P.3d 952 (2002) ..4

In re Detention of Thorell, 149 Wn.2d 724, 72 P.3d 708 (2003)..... 9

In re Detention of Ward, 125 Wn.App. 374, 104 P.3d 751 (2005)...5

In re Detention of Young, 122 Wn.2d 1, 857 P.2d 989 (1993)4

In re the Detention of Audett, __ Wn.2d __, 2006 Wash. LEXIS 885,
(Nov. 30, 2006).....6, 12

In re the Detention of Halgren, 156 Wn.2d 795, 132 P.3d 714
(2006) 12

In re the Detention of Williams, 147 Wn.2d 476, 55 P.3d 597 (2002)
.....4, 5, 12

State v. Blilie, 132 Wn.2d 484, 939 P.2d 691 (1997)7

State v. Fields, 85 Wn.2d 126, 129-30, 530 P.2d 284 (1975)6

State v. Smith, 84 Wn.2d 498, 527 P.2d 674 (1974)6

State v. Templeton, 148 Wn.2d 193, 59 P.3d 632 (2002)6

Washington State Physicians Ins. Exchange & Ass'n v. Fisons
Corp., 122 Wn.2d 299, 858 P.2d 1054 (1993)7, 8

Washington Court of Appeals Cases

Carlson v. Lake Chelan Cmty. Hosp., 116 Wn.App. 718, 75 P.3d
533 (2003) 10

In re Detention of Mathers, 100 Wn.App. 336, 998 P.2d 336 (2000)
.....5

<u>In re Estate of Foster</u> , 55 Wn.App. 545, 779 P.2d 272 (1989)	10
<u>State v. Walls</u> , 106 Wn.App. 792, 25 P.3d 1052 (2001)	9

Statutes

RCW 71.09.090.....	3, 7
--------------------	------

Court Rules

CR 1	4
CR 30	10
CR 35	12
CR 37	1, 2, 5, 7, 8, 9, 10, 12
CR 81	4
RAP 13.3.....	1
RAP 13.4.....	1
RCW 2.04.190.....	6

A. IDENTITY OF PETITIONER

Andre Young, petitioner here and appellant below, asks this Court to accept review of the Court of Appeals decision terminating review designated in Part B of this petition pursuant to RAP 13.3(a)(1) and RAP 13.4(b).

B. COURT OF APPEALS DECISION

Mr. Young seeks review of the Court of Appeals' decision dated December 7, 2006, denying review of the Commissioner's ruling finding the trial court had authority to hold Mr. Young in contempt and indefinitely staying proceedings in his case. The Commissioner's ruling is attached as Appendix A and the Court of Appeals ruling denying discretionary review is attached as Appendix B.

C. ISSUES PRESENTED FOR REVIEW

1. This Court has ruled on numerous occasions that court rules govern trial court procedures unless they are inconsistent with an express portion of a statute governing a special proceeding. CR 37 lists sanctions a trial court may impose for discovery violations and expressly excludes the sanction of contempt for a party's refusal to submit to a mental examination. Did the trial court

lack authority to hold Mr. Young in contempt for refusing to submit to a State-requested mental examination when CR 37 does not permit such a sanction and CR 37 is not inconsistent with a statute?

2. When a court has authority to hold a person in contempt, it may not do so without weighing the surrounding circumstances or imposing an unreasonable or unfair sanction. Here, the court indefinitely stayed Mr. Young's SVP trial, thus leaving him indefinitely confined under a prior SVP commitment, even though a multitude of less drastic sanctions were available that would punish the discovery violation but not deprive Mr. Young of his right to due process of law by denying him the opportunity to contest his custodial detention. Is the court's sanction unreasonable and does it deprive Mr. Young of his right to fundamental fairness and due process of law?

3. Is there a substantial public interest in reviewing the court's decision and clarifying the application of CR 37 to SVP proceedings when the same issue is likely to arise in many future cases?

D. STATEMENT OF THE CASE

After being civilly committed under the sexually violent predator ("SVP") civil commitment laws since 1991, Andre Young presented a *prima facie* case that he no longer meets the criteria for indefinite confinement and the court ordered he receive a new trial pursuant to RCW 71.09.090. In re the Detention of Young, 120 Wn.App. 753, 755, 763, 86 P.3d 810, rev. denied, 152 Wn.2d 1007 (2004); CP 5-16.

Before trial, the court granted the State's request that Mr. Young submit to an unlimited and wide-ranging mental examination under RCW 71.09.090(3) as well as a video deposition. CP 118-19. Mr. Young declined to participate in the evaluation or deposition and in response, the court found him in contempt. 4/1/05RP 11-12; CP 159-62.

As punishment for declining the mental evaluation, the court stayed Mr. Young's trial, thereby stopping him from seeking release from his indefinite civil commitment. CP 160; 4/1/05RP 15-16. The court ruled that Mr. Young's pretrial proceedings would resume only when he complied with the court-ordered mental evaluation, thus keeping him confined by the State under the SVP provisions

despite the court ruling that he receive a new trial. CP 160-61.

After a Motion on the Merits filed by the State, a Commissioner from the Court of Appeals upheld the trial court's ruling.

The facts are further set out in the Commissioner's Ruling at pages 1 to 4, and in the Appellant's Opening Brief at pages 2 to 3, and within the relevant argument sections. The facts as outlined in each of these pleadings are incorporated herein by this reference.

E. ARGUMENT

SINCE CIVIL RULES GOVERN CIVIL PROCEEDINGS, THE COURT IMPERMISSIBLY REFUSED TO APPLY CIVIL RULES CONTROLLING COMPELLED MENTAL EXAMINATIONS TO THE CIVIL SVP PROCEEDING IN THE CASE AT BAR

1. The Court of Appeals decision is contrary to controlling Supreme Court case law. Civil court rules govern procedures in all civil cases, including SVP proceedings. CR 1;¹ In re Detention of Young, 122 Wn.2d 1, 23, 857 P.2d 989 (1993). SVP court proceedings must follow civil court rules unless a statute expressly provides for different procedures. CR 81;² In re the Detention of

¹ CR 1 provides:

These rules govern the procedure in the superior court in all suits of a civil nature whether cognizable as cases at law or in equity with the exceptions stated in rule 81. They shall be construed and administered to secure the just, speedy, and inexpensive determination of every action.

² CR 81(a) provides, in relevant part, that "except where inconsistent with

Williams, 147 Wn.2d 476, 488, 55 P.3d 597 (2002); see In re Detention of Petersen, 145 Wn.2d 789, 801, 42 P.3d 952 (2002) (CR 26 governs discovery in SVP proceeding since statute not inconsistent with civil rule); see also In re Detention of Ward, 125 Wn.App. 374, 379, 104 P.3d 751 (2005) (civil rules govern post-trial motions for relief since no statute addresses such motions); In re Detention of Mathers, 100 Wn.App. 336, 998 P.2d 336 (2000) (summary judgment civil rules apply to SVP proceedings despite heightened burden of proof since statute not expressly inconsistent).

CR 37 prohibits a court from using its contempt powers to punish a party's refusal to submit to a mental examination. CR 37. CR 37 is the court rule governing sanctions that may be imposed for discovery violations. CR 37 provides a long list of sanctions the court may impose for various discovery violations (full text attached as Appendix A to Appellant's Opening Brief). Yet CR 37(2)(D) also provides that the court may issue,

In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to physical or mental examination.

rules or statutes applicable to special proceedings, these rules shall govern all civil proceedings."

The Court of Appeals found that civil rules simply do not apply to SVP proceedings. Ruling, at 5 (attached as App. A). The Commissioner cites Williams for this proposition and even quotes from Williams as purported authority on this topic. Id. at 5-6. But this ruling conspicuously forgoes the additional and necessary requirement that civil rules are only superceded by statute when there is a specific conflict with a statute. Williams, 147 Wn.2d at 488. In Williams and more recently in In re the Detention of Audett, __ Wn.2d __, 2006 Wash. LEXIS 885, *9, 11 (Nov. 30, 2006), this Court has explicitly ruled statutory provisions trump civil court rules only when directly inconsistent.

Statutes do not trump court rules. State v. Smith, 84 Wn.2d 498, 501, 527 P.2d 674 (1974) (court rule governs bail determination even if conflict with statute). The judiciary has inherent powers to create procedural rules for the administration of justice, a power that embraces the gathering and obtaining of evidence. State v. Templeton, 148 Wn.2d 193, 213, 59 P.3d 632 (2002); State v. Fields, 85 Wn.2d 126, 127, 129-30, 530 P.2d 284 (1975) (court rule governs search warrants even if rule conflicts with statute, because rule is procedural); see RCW 2.04.190

(according supreme court power to generally regulate taking and obtaining of evidence in all proceedings of any nature); Wash. Const. art. 4, section 1.³

In deciding whether an inconsistency exists, courts try to avoid finding inconsistencies where possible. State v. Blilie, 132 Wn.2d 484, 491, 939 P.2d 691 (1997); see Audett, 2006 Wash. LEXIS 885, *9 (explaining efforts to harmonize interaction between statute and court rule). Here, the court rule does not conflict with the relevant statute governing discovery or pre-trial procedures and thus, the court rule governs the procedures involved.

RCW 71.09.090(3) makes no mention of the procedural requirements of the examination. Unlike RCW 71.09.040, it does not specify that DSHS should promulgate rules upon which the examination may be conducted. Additionally, RCW 71.09.090 includes no procedural rules for discovery violations or appropriate sanctions in the statute, and therefore, the procedural rules set forth in the court rules govern the discovery in this type of trial.

In sum, the statute contains no substitute for CR 37 and

³ "The judicial power of the state shall be vested in a supreme court, superior courts, justices of the peace, and such inferior courts as the legislature may provide." Art. 4, section 1.

creates no conflict with CR 37. Therefore, CR 37, like other civil rules not inconsistent with a statute, governs SVP proceedings under RCW 71.09.090(3).

CR 37 specifically addresses the discovery issue in the case at bar, and thus it governs the appropriate sanction.⁴ Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp., 122 Wn.2d 299, 340, 858 P.2d 1045 (1993). Even if the inherent power of the court permitted sanctions, “[t]he inherent power of the court should not be resorted to where rules adequately address the problem.” Id. Because CR 37 specifically addresses the type of conduct involved in the case at bar, and since it was promulgated as part of the court’s power to create procedural rules governing trials, it dictates the authorized sanctions for failing to comply with a mental examination requested as part of discovery.

2. The trial court abused its authority by issuing a severely harsh contempt sanction. The court’s failure to impose less severe sanctions not only violates the terms of CR 37, but it is contrary to

⁴ CR 37(b)(2)(D) provides that the court may issue sanctions for failure to comply with discovery, and, “In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to physical or mental examination . . .” (emphasis added).

the rules governing discovery violations, which require the court to first consider all of the surrounding circumstances, the importance of the evidence to its proponent, and the ability of the opposing party to formulate a response or to comply with the request.

Washington State Physicians Ins. Exchange & Ass'n v. Fisons Corp., 122 Wn.2d 299, 338, 858 P.2d 1054 (1993). In the case at bar, the court presumed that the deposition was permitted and therefore a failure to submit to it was *per se* contempt of court. 3/21/05RP 42; 4/1/05RP 11-16. The court did not weigh competing interests before summarily finding Mr. Young in contempt, rendering the contempt ruling improper and it must be reversed on remand.

Although civil in nature, SVP proceedings involve significant deprivations of liberty akin to a criminal conviction and therefore they must accord the petitioner the fundamental fairness that underlies the right to due process of law. In re Detention of Thorell, 149 Wn.2d 724, 731, 72 P.3d 708 (2003) ("Commitment for any reason constitutes a significant deprivation of liberty triggering due process protection."); Thorell, 149 Wn.2d at 744 (standard of proof of criminal trials required in SVP proceedings based on significant

deprivation of liberty and strict standards of legislative scheme). In criminal cases, the principle of lenity requires that the procedure most favorable to the accused must be adopted when there is ambiguity as to the Legislature's intent. State v. Walls, 106 Wn.App. 792, 800, 25 P.3d 1052 (2001) (explaining principle of lenity). Similar rationale applies to an SVP trial in which life-long deprivation of liberty is at stake.

Since the statute contains no mechanism for discovery sanctions, CR 37 applies. CR 37 requires the court to consider a range of sanctions and commands it utilize the least severe sanction that will induce the party to comply with the court order.

In the case at bar, the court sanctioned Mr. Young by indefinitely staying the proceedings, so that he will remain confined as a sexually violent predator until he submits to the evaluation and a video deposition.⁵ CP 160-61; 4/1/05RP 15-16.

⁵ To the extent the civil rules govern the refusal to submit to a deposition, contempt is a permissible finding for a refusal, as long as the deposition request is not conducted in bad faith or in an effort to embarrass, annoy, or oppress the deponent. CR 37 (a) (permitting contempt finding); CR 30(d) (permitting termination or limitation on deposition). Mr. Young asserts such a motive in the instant case, based upon the amount of information already available to the State and the highly intrusive nature of the deposition. Moreover, if only the deposition were at issue, it is not clear that Mr. Young would continue to object to this ordered discovery.

In imposing the sanction of indefinite confinement, the court adopted an extremely harsh sanction. Other sanctions available would allow the trial to proceed but would penalize Mr. Young. CP 146-48. For example, the jury could be instructed that Mr. Young's refusal to submit to an evaluation or deposition, or it could be told that it must not hold the State's failure to have a recent evaluation of Mr. Young against the State. The court could limit Mr. Young from calling his own expert at trial, or bar Mr. Young from introducing recent evaluations of his mental state. See Carlson v. Lake Chelan Cnty. Hosp., 116 Wn.App. 718, 737, 75 P.3d 533 (2003) (exclusion of testimony is "extreme sanction" for discovery violation, quoting In re Estate of Foster, 55 Wn.App. 545, 548, 779 P.2d 272 (1989)). The exclusion of testimony is a permissible sanction for a willful violation of a court order. Id.

Under the facts of this case, court's refusal to adopt alternative sanctions that would allow the trial to proceed is untenable. Mr. Young had been in the State's custody in as an SVP civil committee since 1990. The State had 15 years of routine, daily observation of Mr. Young. The State's expert at the show cause hearing presented information that persuaded the trial

court that Mr. Young did not even make a prima facie case that conditions had changed and he was entitled to a new trial. Young, 120 Wn.App. at 758-59. Mr. Young received a new trial only because the trial court was not allowed to weigh the evidence presented in the show cause hearing. Id. It is inconceivable that the State does not have vast information upon which it may proceed to re-trial, and it may receive the benefit of favorable instructions and evidentiary rulings as a consequence of Mr. Young's failure to submit to an evaluation. The indefinite stay of proceedings is grossly unfair and should not be countenanced as a punishment for Mr. Young's disinclination to submit to extremely invasive psychological testing.

In sum, the State had substantial information on which it could argue at trial that Mr. Young should continue to be confined. The State never even made any particularized claim that it needed information from Mr. Young to proceed, it merely asserted its right to have him evaluated by its own expert. Since lesser sanctions are entirely appropriate given the substantial liberty interests at stake and the unlikelihood that a new evaluation would provide the State with any new ammunition to use in its effort to continue to

confine Mr. Young. Accordingly, the court's sanction should be reversed and a less severe sanction ordered.

3. Substantial public interest favors review. As this Court has recognized in its recent decisions in Williams; Audett; and In re the Detention of Halgren, 156 Wn.2d 795, 132 P.3d 714 (2006) (reviewing court's authority to order mental examination pursuant to CR 35), it is important to the public as well as the litigants to clearly explain the basic procedural rules governing SVP proceedings. Review of the court's ruling that finds CR 37 inapplicable to SVP proceedings should be accepted by this court, so that it may clarify the trial judge's authority in applying the civil court rules to an SVP proceeding in which a person has won the right to a new trial.

F. CONCLUSION

Petitioner Andre Young respectfully requests that review be granted and the trial court's ruling be reversed.

DATED this __ day of January 2007.

Respectfully submitted,

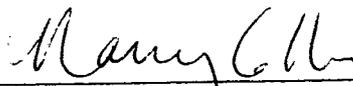
NANCY P. COLLINS (WSBA 28806)
Washington Appellate Project-91052
Attorneys for Petitioner

F. CONCLUSION

Petitioner Andre Young respectfully requests that review be granted and the trial court's ruling be reversed.

DATED this 5th day of January 2007.

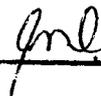
Respectfully submitted,



NANCY P. COLLINS (WSBA 28806)
Washington Appellate Project-91052
Attorneys for Petitioner

Today I deposited in the mail of the United States of America a properly stamped and addressed envelope directed to the attorneys of record of plaintiff/defendant containing a copy of the document to which this declaration is attached.

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

Name 

Date JAN - 5 2007

Done in Seattle, Washington

APPENDIX A

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

RECEIVED

In the Matter of the Detention of)
ANDRE B. YOUNG,)
Appellant,)
v.)
STATE OF WASHINGTON,)
Respondent.)
_____)

No. 56171-5-1

SEP - 6 2006
Washington Appellate Project

COMMISSIONER'S RULING
GRANTING MOTION ON
THE MERITS TO AFFIRM

In this sexual predator proceeding, Andre B. Young appeals the trial court order holding him in contempt for refusing to participate in a clinical/forensic interview with the State's retained expert and refusing to participate in a video deposition. The State filed a motion on the merits to affirm under RAP 18.14(a). The issues on appeal are clearly without merit. RAP 18.14(e). The motion is granted, and the trial court order is affirmed.

FACTS

In 1991, Young was committed to the Special Commitment Center (SCC) as a sexually violent predator (SVP). In 2001, he retained an expert, Dr. Howard Barbaree, who evaluated Young and opined that due to his advanced age, Young's risk of reoffending was so reduced that he no longer met the criteria for an SVP. In 2004, this court concluded that Young had made a prima facie showing that he is no longer a sexually violent predator and reversed and

No. 56171-5-1/2

remanded for trial under RCW 71.09.090. In re Det. of Young, 120 Wn. App. 753, 86 P.3d 810 (2004).

In preparation for trial, the State retained an expert, Dr. Harry Hoberman, for the purpose of evaluating Young. The State requested that Young submit to a psychological evaluation and testing. The State notified Young that it would take a video deposition and had scheduled Dr. Hoberman to interview Young. Young objected to the forensic interview and psychological testing and sought a protective order that he not be required to participate. Young also filed a motion to quash the video deposition.

On March 21, 2005, the trial court denied Young's motion for a protective order and motion to quash. The court ordered Young to submit to a clinical/forensic interview and written psychological testing as soon as practicable. Only Dr. Hoberman, Young, and Young's counsel might be present, and Young's counsel might observe the examination, but not interfere. Young was required to answer all questions except those that relate to matters for which he could still be criminally prosecuted. The court also ordered Young to submit to a video deposition under CR 30. Finally, the court ordered that failure to comply with the orders might result in the imposition of appropriate sanctions.

Young notified the State that he would not participate in the evaluation or the deposition and filed and noted a motion for discretionary review.¹ I denied

¹ In re Det. of Andre B. Young, No. 55988-5-1.

the motion for discretionary review², a panel of judges denied Young's motion to modify³, and the Supreme Court denied discretionary review.⁴

In the meantime, on April 1, 2005, the trial court found Young in contempt for refusing to comply with the order and stayed all trial court proceedings until Young purged his contempt. The trial court entered written findings and conclusions, which include:

I. FINDINGS OF FACT

D. In open court on April 1, 2005, Mr. Young confirmed that he was refusing to comply with the requirements of the March 21, order. Mr. Young's refusal to comply with the order of this court is done willingly and intentionally. His refusal to appear at, and participate in, the deposition and interview constitutes contempt of court.

E. It remains within [appellant] Young's power to comply with the court's order requiring his attendance and participation in his deposition and the interview with Dr. Hoberman.

F. The remedial sanction most reasonably calculated to result in [Mr. Young's] compliance with this court's order regarding the deposition is to stay the proceedings until he purges his contempt. The court has considered lesser coercive sanctions, but finds that they are unlikely to secure Mr. Young's compliance with the court's order and would work to prejudice the ability of the State to present its case. The court will consider the possibility of a progressive sanction, including jail, if the stay fails to secure Mr. Young's compliance with the March 21, 2005 order.

II. CONCLUSIONS OF LAW

A. [Mr. Young] is in contempt of court under RCW 7.21.010(1)(b) & (c).

² Commissioner's Ruling Denying Discretionary Review, August 11, 2005.

³ Order Denying Motion to Modify, November 16, 2005.

⁴ Commissioner's Ruling Denying Discretionary Review, No. 78087-1, February 24, 2006; Order Denying Motion to Modify, May 3, 2006.

B. The court has the authority to place [Mr. Young] in civil contempt under RCW 7.21, CR 37, and the court's inherent authority to enforce its orders.

The court struck the trial date and ordered that all trial proceedings are stayed and Young shall remain at the SCC until he purges his contempt by completing his deposition and interview in accord with the March 21, 2005 order.

Young appeals this order.

MOTION ON THE MERITS CRITERIA

A motion on the merits to affirm will be granted in whole or in part if the appeal or any part thereof is determined to be clearly without merit. In making these determinations, the . . . commissioner will consider all relevant factors including whether the issues on review (a) are clearly controlled by settled law, (b) are factual and supported by the evidence, or (c) are matters of judicial discretion and the decision was clearly within the discretion of the trial court or administrative agency.

Applying these criteria in light of State v. Rolax, 104 Wn.2d 129, 702 P.2d 1185 (1985), the issue on appeal is clearly without merit.

DECISION

Young contends that the trial court lacked authority to find him in contempt and stay his trial for refusing to submit to the evaluation and deposition. Specifically, he contends that the civil rules apply to SVP proceedings, that CR 37 is the rule applicable to discovery violations, that CR 37(b)(2)(D) precludes contempt as a sanction for a party's failure to comply with an ordered mental examination, that CR 37(b)(2) precludes contempt as a sanction for a party's failure to participate in a deposition without weighing the competing interests, and that imposing the sanction of indefinitely staying the

No. 56171-5-I/5

SVP proceeding is extremely harsh and unnecessary because there were other sanctions available, such as instructing the jury that Young refused to submit to an evaluation or deposition or that the State's failure to have a recent evaluation of Young should not be held against it, or limiting Young from calling his own expert at trial or barring him from introducing recent evaluations. Young also argues that the trial court abused its discretion in refusing to adopt lesser sanctions where Young has been in the State's custody for many years and it has a vast quantity of information on which it may proceed to trial.

Young's arguments fail for several reasons. First, in this challenge to the finding of contempt, Young may not collaterally attack the underlying order requiring him to participate in the evaluation and deposition. In re Det. of Broer, 93 Wn. App. 852, 858, 957 P.2d 281 (1998) (except for certain inapplicable exceptions, under the collateral bar rule a court order cannot be collaterally attacked in contempt proceedings arising from its violation). As noted above, Young's challenge to the order has been considered and rejected. Here, he is limited to challenging the trial court's decision to hold him in contempt for failing to participate in the evaluation and deposition, which is reviewed for an abuse of discretion. Broer, 93 Wn. App. at 863.

Second, in an analogous situation⁵, the court in Broer rejected the same argument that CR 37(b)(2)(D) precludes contempt as a sanction for a party's failure to comply with an ordered mental examination:

Broer next argues, on the basis of CR 37(b)(2)(D), that the trial court may not use contempt as a sanction for his failure to comply with an order to submit to a mental or physical examination. We disagree with this argument because, as we have already noted, the Civil Rules do not govern this special proceeding. Thus, CR 37(b)(2)(D) does not act as a bar to the use here of the sanction of contempt.

While RCW 71.09.040 does not expressly address the court's power to enforce its order for a mental examination by holding the potentially sexually violent predator in contempt, the court has the inherent power to punish for contempt. Moreover, there is also statutory authority supporting the court's exercise of its power of contempt, [citing RCW 7.21.010, 030].

(footnotes omitted.) Broer, 93 Wn. App. at 864-65. And contrary to Young's argument, nothing in In re Det. of Williams, 147 Wn.2d 476, 55 P.3d 597 (2002), changes the Broer rule. In Williams, the court considered whether the State was entitled to a precommitment mental examination under CR 35, where the alleged SVP had already been evaluated by the Department of Social and Health Services (DSHS) under the authority of RCW 71.09.040. The court concluded that because SVP proceedings are "special proceedings" within the meaning of CR 81 (governing the applicability of civil rules), the SVP statute controls and CR 35 is inapplicable:

⁵ Broer involved an evaluation under RCW 71.09.040(4) after the trial court determined there was probable cause to determine that Broer was a sexually violent predator.

The statute expressly provides for postcommitment evaluation, but it makes no mention of evaluations during pretrial discovery. *CR 35 is inconsistent with the special proceedings set out in chapter 71.09 RCW.* We hold that the mental examination by the State's experts of a person not yet determined to be a sexually violent predator is limited to the evaluation required under RCW 71.09.040(4).

(emphasis added.) Williams, 147 Wn.2d at 491. In reaching this conclusion, the court contrasted a postcommitment release proceeding under RCW 71.09.090, which specifically provides for an evaluation by experts chosen by the State. Williams, 147 Wn.2d at 491.

Moreover, the primary purpose of civil contempt is to coerce compliance with a court order. RCW 71.09.090(3)(a) unambiguously permits the State to have Young evaluated by experts of its choosing. To the extent there is any requirement for the trial court to consider lesser sanctions in this context, it plainly did so, finding that it was within Young's power to comply with the court's order and that lesser sanctions were unlikely to coerce Young's compliance and would prejudice the State's ability to present its case.⁶ The contempt finding was not an abuse of discretion, and as in Broer, staying the trial proceedings until Young complied with the trial court's order was not error. Broer, 93 Wn. App. at 866.

The issue on appeal is clearly without merit, and the trial court order is affirmed. Now, therefore, it is hereby

⁶ In remanding for trial, this court anticipated a "complete evaluation" so that the State could challenge the opinion of Young's expert. See also State v. Hutchinson, 135 Wn.2d 863, 881-82, 959 P.2d 1061 (1998).

No. 56171-5-1/8

ORDERED that the motion on the merits is granted and the decision of the trial court is affirmed.

Done this 6th day of September, 2006.

Mary S. Hall
Court Commissioner

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

In the Matter of the Detention of)
ANDRE B. YOUNG,)
Appellant,)
v.)
STATE OF WASHINGTON,)
Respondent.)
_____)

No. 56171-5-1

ORDER DENYING
MOTION TO MODIFY

RECEIVED

DEC - 7 2006

Washington Appellate Project

Appellant has moved to modify the commissioner's September 6, 2006 ruling granting a motion on the merits and affirming the decision of the trial court. We have considered the motion under RAP 17.7 and have determined that it should be denied.

Now, therefore, it is hereby

ORDERED that the motion to modify is denied.

Done this 7th day of December, 2006.

Alzid, J.

Dunne, J.

Colman, J.