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NO. 91112-6

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

RICKEY ARELIIOUS BEAVER,

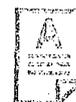
Appellant.

SUPPLEMENTAL BRIEF OF RESPONDENT

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ORIGINAL

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A. **ISSUE PRESENTED**

A person who pleads not guilty by reason of insanity may be civilly committed under chapter 10.77 RCW upon a finding by the trial court that the person is both mentally ill and dangerous. Once a person has established that he is not guilty by reason of insanity, the person's state of insanity – *i.e.*, the mental illness that led him to a commit a criminal act – is presumed to continue to exist until the person proves otherwise by a preponderance of the evidence. This presumption of continuing insanity comports with both procedural and substantive due process under well-settled law.

In this case, the trial court properly revoked Rickey Beaver's conditional release after finding that Beaver had violated the conditions of his release and that he was dangerous. Beaver did not attempt to establish that he was no longer mentally ill at the time of the revocation. Beaver now claims on appeal that revoking a conditional release without a renewed finding of current mental illness by the trial court violates procedural and substantive due process rights.

Should Beaver's claim be rejected?

B. STATEMENT OF THE CASE

In August 2004, Rickey Beaver burglarized a home in Federal Way and was charged with Residential Burglary. CP 1-3. In August 2005, Beaver entered an insanity plea; he was found not guilty by reason of insanity (NGRI) and committed to Western State Hospital (WSH). CP 8-10, 193-96. In support of his insanity plea, Beaver presented the WSH reports of Douglas Campbell, Ph.D, from January 2005 (CP 283-304) and February 2005 (CP 93-95),¹ and the June 2005 report of Arthur Davis Ph.D.² CP 328-38.³

Beaver was first granted a conditional release in January 2007. CP 11-16. The court modified his conditions of release in August 2007 after

¹ Dr. Campbell did not offer a firm opinion regarding Beaver's insanity in either report. Instead, he highlighted information that supported Beaver's insanity, including Beaver's statements that he was hearing voices at the time of the crime and treatment records from 2004 indicating that Beaver was chronically mentally ill. CP 299. Dr. Campbell highlighted information that supported Beaver's sanity as well. CP 300.

² Beaver retained Dr. Davis pursuant to RCW 10.77.010(2). Dr. Davis was of the opinion that Beaver was insane at the time of the burglary.

³ It should be noted that Beaver's case is not representative of a typical NGRI case. Unlike most people who are acquitted by reason of insanity, Beaver was not consistently diagnosed with a major mental illness such as schizophrenia or bipolar disorder. Rather, although Beaver's diagnoses changed somewhat over time, it was always agreed that one of Beaver's major problems was his abuse of drugs and alcohol. In fact, in 2011, WSH claimed that Beaver's primary problem was drug-induced psychosis, which does not constitute insanity under the law. Accordingly, although Beaver's case is before the Court, the Court must also consider the presumption of continuing insanity in the context of a more typical NGRI case.

A detailed recitation of the facts of this case, including the diagnoses, medications that Beaver received over the years, and his conditional release history is contained in the State's brief for the Court of Appeals. *See* Brief of Respondent, at 2-15. In this brief, in the interests of brevity and clarity and for the Court's convenience, Beaver's various diagnoses and medications are listed in the Appendix.

Beaver used drugs (CP 35), requiring Beaver receive out-patient chemical dependency and mental health treatment through Sound Mental Health. CP 17-18.

Beaver's conditional release was modified again after the court issued a bench warrant in October 2007 because Beaver failed to attend treatment and his whereabouts were unknown. CP 305-13. Beaver was picked up on the warrant in November 2007 and was returned to WSH for evaluation pending a revocation/modification hearing. CP 19-20. In May 2008, following WSH's recommendation (CP 97-100), the court modified the conditional release and ordered Beaver undergo in-patient treatment at Pioneer Center North. CP 21-24. He completed treatment in July 2008, and returned to the community on conditions. CP 225. In October 2008, Beaver violated those conditions by smoking marijuana. CP 25-26, 220. The court again modified the conditions and released him back into the community. CP 25-27.

Beaver was picked up on a bench warrant in November 2009 for failing to report (CP 30-38), and was returned to WSH pending a revocation hearing. CP 41-43. The trial court revoked Beaver's conditional release on January 7, 2010, finding that Beaver had violated conditions by 1) failing to remain in remission from effects of mental disease or defect; 2) failing to report to his CCO as required; and 3) failing

to reside at an approved residence. The court also found that Beaver was a threat to public safety. CP 41-43.⁴

Beaver was granted another conditional release in August 2010, and was sent to Pioneer Counseling to undergo in-patient treatment. CP 197-205. Pioneer discharged Beaver back to WSH in November 2010. CP 25-26, 220. On March 3, 2011, WSH submitted a letter to the trial court in support of Beaver's final discharge. CP 367-68. The PSRP⁵ did not support Beaver's final discharge because WSH failed to establish that Beaver no longer suffered a mental disease or defect. CP 361-65.

The State obtained an independent evaluation by Brian Judd, Ph.D, in accordance with RCW 10.77.200(3). CP 251-60. Dr. Judd also opposed Beaver's unconditional release because, based on diagnoses existing on August 27, 2005 (the date Beaver was found NGRI) and his current diagnosis of polysubstance dependence, Beaver remained mentally ill and dangerous and in need of continued treatment. CP 260. Beaver obtained his own evaluation by Brendon Scholtz, Ph.D. CP 262-69.

⁴ After Beaver's January 2010 revocation hearing, the State discovered that Beaver had been arrested for DUI in June 2009 in Snohomish County. CP 236-41. The State also learned that in October 2009, Beaver had stolen over 250 dollars' worth of meat from a Federal Way WinCo. The WinCo loss prevention officer reported that he felt that Beaver was too dangerous to detain without police assistance. CP 243-49.

⁵ The Public Safety Review Panel (PSRP) was established by the Legislature in 2010 as a safeguard to protect the public from the early release of the criminally insane. The panel provides the court an independent assessment of an NGRI defendant's risk to public safety for all DSHS Secretary/WSH recommendations that change an NGRI defendant's commitment status. *See* RCW 10.77.270(1)(a) and (3).

Dr. Scholtz supported Beaver's unconditional release, but noted that if Beaver resumed using drugs or alcohol he would pose an immediate and serious threat to public safety. CP 269.

Beaver's unconditional release jury trial began on July 20, 2011. CP 67.⁶ On July 27, 2011, before resting his case, Beaver voluntarily withdrew his petition for final discharge and entered into a stipulated conditional release agreement. Beaver agreed that he continued to meet the criteria for NGRI under RCW 10.77. The trial court accepted the stipulation and granted his immediate conditional release. CP 104-09.

Approximately six months later, Beaver failed to report to his CCO, failed to attend substance abuse treatment, and used cocaine. CP 219. The State sought revocation. CP 206-69. On April 6, 2012, the trial court found that Beaver had violated conditions of release, but modified the conditions to increase Beaver's treatment at Sound Mental Health rather than ordering revocation. CP 114-19.

In December 2012, Beaver crashed his truck into a parked Jeep and was charged with DUI. RP 8-15; CP 160, 168. The trial court revoked Beaver's conditional release on January 11, 2013, finding that Beaver had violated the conditions of release by driving while intoxicated and that he was dangerous. CP 141-44. Prior to the revocation hearing, Beaver had

⁶ This is the only point in the proceedings where Beaver petitioned for final discharge prior to the trial court revoking his conditional release on January 11, 2013.

not requested a final discharge hearing on grounds that he was no longer mentally ill.

After signing the order revoking Beaver's conditional release, the trial court expressed concern whether revocation served only to detain Beaver because WSH did not believe he was in need of further mental health treatment. RP 28-33. On the other hand, the trial court noted that other evaluators and the PSRP disagreed with WSH's assessment. RP 30. Neither of these observations was incorporated into the trial court's revocation findings.

Beaver filed a petition for release under RCW 10.77.200(3) in May 2013. At this point, WSH again supported conditional release. Based on an agreement between the parties, the court granted conditional release in October 2013. CP 275-78.

On May 21, 2014, again based on agreement of the parties, Beaver was granted a final discharge. At this point, both the PSRP and WSH were of the opinion that Beaver's risk for re-offense and was unrelated to a mental disease or defect. *See Appendix.*

C. ARGUMENT

1. **THE PRESUMPTION OF CONTINUING INSANITY FOR PURPOSES OF REVOKING AN NGRI DEFENDANT'S CONDITIONAL RELEASE DOES NOT VIOLATE PROCEDURAL OR SUBSTANTIVE DUE PROCESS.**

Beaver argues here, as he did for the first time at the Court of Appeals, that before the trial court can revoke an NGRI defendant's conditional release the court must first make a finding of current mental illness. See Petition for Review, at 6. Beaver's argument continues to overlook the long-standing, constitutionally-tested premise that once a criminal defendant establishes that he is not guilty by reason of insanity, his mental illness is presumed to continue to exist until he presents sufficient evidence for a finding to the contrary.

Only the defendant can plead and prove insanity in Washington; the State is constitutionally prohibited from doing so. Thus, in accordance with well-settled law, it is both logical and constitutionally permissible for courts to presume that insanity continues until the defendant shows otherwise. Requiring the State to prove continuing insanity at conditional release revocation hearings would turn this well-established principle on its head. Moreover, ample due process protections apply in NGRI proceedings. Turning revocation proceedings into *de facto* commitment

trials at which *the State* must prove insanity (in violation of this Court's prior holdings) is not required. The Court of Appeals should be affirmed.

The Due Process Clause of the Fourteenth Amendment provides: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV. Article I, section 3 of the Washington Constitution also provides that "[n]o person shall be deprived of life, liberty, or property, without due process of law." Const. art. I, § 3. The state and federal due process clauses provide the same protections, and they are interpreted in an identical manner. State v. McCormick, 166 Wn.2d 689, 699, 213 P.3d 32 (2009).

Due process protects the individual from the arbitrary exercise of government power. Daniels v. Williams, 474 U.S. 327, 331, 106 S. Ct. 662, 88 L. Ed. 2d 662 (1986). It requires the government to follow appropriate, fair procedures before it deprives any person of a protected interest; this is commonly referred to as "procedural due process." Id.; United States v. Salerno, 481 U.S. 739, 746, 107 S. Ct. 2095, 95 L. Ed. 2d 697 (1987). Due process also "prevents the government from engaging in conduct that 'shocks the conscience' or interferes with rights 'implicit in the concept of ordered liberty'"; this is commonly referred to as "substantive due process." Salerno, 481 U.S. at 746 (internal citations omitted).

In a criminal case in Washington, only the defendant can plead and prove insanity. State v. Jones, 99 Wn.2d 735, 664 P.2d 1216 (1983). Indeed, it is a violation of the defendant's constitutional rights to allow the State to plead and prove insanity on the defendant's behalf. Id. An insanity acquittal definitively establishes that the defendant committed a crime and that a mental illness caused him or her to do so. Jones v. United States, 463 U.S. 354, 363, 103 S. Ct. 3043, 77 L. Ed. 2d 694 (1983). Once the defendant establishes that he or she was insane at the time of the criminal act, it is both reasonable and constitutionally permissible to presume that insanity continues until proven otherwise. Id. at 364.

The law in Washington has embraced the presumption of an insanity acquittee's continuing insanity for over 100 years.⁷ In re Brown, 39 Wn. 160, 166, 81 P.2d 552 (1905) (once established by the defendant, insanity is presumed to continue); State v. Platt, 143 Wn.2d 242, 251-52, 19 P.3d 412 (2001) (acquittee petitioning for conditional release bears the burden of showing that conditional release is appropriate if not affirmatively recommended by DSHS, citing numerous cases); State v. Klein, 156 Wn.2d 103, 124 P.3d 644 (2005) (acquittee petitioning for final

⁷ Moreover, in the context of competency proceedings in criminal cases, this Court recently established that the presumption of competency applies until and unless the defendant proves incompetency by a preponderance of the evidence. State v. Coley, 180 Wn.2d 543, 326 P.3d 702 (2014).

discharge bears the burden of showing she is no longer mentally ill). As this Court stated unequivocally in 1905,

[I]nasmuch as it was a fact established after a full hearing, that the petitioner was insane at the time of the [crime], the presumption is that the same condition continues, and the burden is upon him to show to the contrary.

Brown at 166. Placing the burden of proving restored mental health on the insanity acquittee does not violate due process. Platt, 143 Wn.2d at 251.

Since 1983, when this Court held in State v. Jones that only criminal defendants may plead and prove insanity, the presumption of continuing insanity has been incorporated into the statutory provisions of chapter 10.77 RCW. Klein, 156 Wn.2d at 118. The presumption of continuing insanity applies from acquittal until the defendant proves otherwise:

- (3) . . . The burden of proof shall be upon the petitioner to show by a preponderance of the evidence that the person who is the subject of the petition no longer presents, **as a result of a mental disease or defect**, a substantial danger to other persons, or a substantial likelihood of committing criminal acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions. . . .

RCW 10.77.200(3) (emphasis added); *see also* Platt, 143 Wn.2d at 251;

Klein, 156 Wn.2d at 114. On the other hand, once the insanity acquittee proves by a preponderance of the evidence that he or she is no longer mentally ill, due process requires that the acquittee be unconditionally

released even if he or she is still dangerous. State v. Reid, 144 Wn.2d 621, 630, 30 P.3d 465 (2001).

Based on the above, if the presumption of continuing insanity applies from acquittal until final discharge (which it does), the presumption clearly continues through both the conditional release process under RCW 10.77.150 and the revocation process under RCW 10.77.190, and neither procedural nor substantive due process requires otherwise.

a. Beaver Was Provided Procedural Due Process.

Contrary to Beaver's assertion, the revocation proceedings of RCW 10.77.190 provide ample procedural due process and sufficient safeguards against the erroneous deprivation of liberty. See State v. Derenoff, 182 Wn. App. 458, 465-68, 332 P.3d 1001 (2014) (citing *inter alia* Mathews v. Eldridge, 424 U.S. 319, 334, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976)).⁸

Beaver's claim is without merit.

The Derenoff court specifically found that all insanity acquittees facing revocation of a conditional release under RCW 10.77.190 are afforded ample procedural due process. For instance, they are certainly entitled to assistance of counsel throughout the proceedings. RCW 10.77.020(1). They

⁸ Under the Mathews test, courts balance three factors in determining what procedural due process is required in a particular context: (1) the private interest affected; (2) the risk of erroneous deprivation of that interest through existing procedures and the probable value, if any, of additional procedural safeguards; and (3) the governmental interest, including costs and administrative burdens of additional procedures.

are also entitled to an immediate mental examination before the revocation hearing, ensuring that the trial court has current information when deciding whether to revoke. RCW 10.77.190(2); Derenoff, 182 Wn. App. at 466-67.

Furthermore, Derenoff held that the procedures in place under RCW 10.77 as a whole safeguard against the risk of erroneous deprivation of liberty following revocation. Under RCW 10.77.025, the State cannot hold an insanity acquittee in a facility longer than the statutory maximum sentence for the crime charged. RCW 10.77.025.⁹ An insanity acquittee is entitled to a mental health examination every six months (RCW 10.77.140), and may also request a conditional release or a final discharge every six months. RCW 10.77.150(5) and RCW 10.77.200(5).

In light of the protections outlined above, Beaver's claim that the presumption of continued insanity violates procedural due process is without merit. Beaver had the right to an immediate mental health examination before any revocation hearing. Beaver's failure to exercise that right prior to the hearing in January 2013 does not amount to a due process violation. On the other hand, Beaver invoked his right to counsel at the January 2013 hearing and at all prior hearings; he even discharged several attorneys and requested new counsel at various points in the proceedings. Beaver had also undergone evaluations for prior revocation hearings, including the April

⁹ In Beaver's case, that is ten years.

2012 revocation hearing at which the trial court modified the conditions of release based on recommendations from WSH and Sound Mental Health, CP 118-21. In sum, Beaver was afforded ample due process.

Furthermore, Beaver cannot claim that his sanity was restored prior to the January 2013 revocation hearing. Whether mental illness is present is a question of fact. Klein, 156 Wn.2d at 116. Unlike the defendant in Foucha,¹⁰ Beaver had not proven, by a preponderance of the evidence, that he was no longer mentally ill. Beaver petitioned for final discharge only once prior to the January 2013 revocation hearing, and accordingly, he was granted a jury trial. Although WSH supported Beaver's final discharge at that time, that opinion was disputed by the PSRP and Dr. Judd. Regardless, the issue was never fully adjudicated because Beaver dismissed his petition for final discharge before he rested his case and entered into a stipulation for an immediate conditional release. Therefore, the presumption of continued insanity remained intact.

Moreover, not only was Beaver's continued insanity presumed at the January 2013 revocation hearing, it was supported by the report from Sound Mental Health submitted in compliance with RCW 10.77.140, which

¹⁰ In Foucha v. Louisiana, 504 U.S. 71, 112 S. Ct. 1780, 118 L. Ed. 2d 437 (1992), after a full evidentiary hearing where the doctors testified that Foucha did not suffer from a mental illness and had recovered from a drug-induced psychosis, the court denied Foucha's release, finding that he was too dangerous. The United States Supreme Court held that an insanity acquittee cannot not be detained in the hospital if he is dangerous but not mentally ill. Foucha, at 79.

requires updated reports of the acquittee's mental status every six months. Their October 2012 report diagnosed Beaver with a number of mental disorders, including bipolar disorder, PTSD, and polysubstance abuse disorders. CP 167. In February 2012, although WSH reported that Beaver's psychiatric symptoms were in remission¹¹ (CP 119), continuing mental illness may still be presumed from this report and from all other information available to the trial court.

Significantly, Beaver's insanity acquittal was based in part on a psychoactive substance-induced organic mental disorder. Thus, a nexus existed between his insanity and the more current diagnosis of polysubstance abuse, because both stemmed from his long-standing addiction to controlled substances. *See Klein*, 156 Wn.2d at 118-19 (polysubstance dependence constitutes a "mental disease or defect" for purposes of NGRI). Given the nexus between Beaver's addictions and his mental illness, Beaver's excessive use of alcohol in December 2012 also supports the presumption of his continued insanity in January 2013.

As a matter of procedural due process, the State also has an interest in avoiding the premature release of insanity acquittees, whose mental illnesses caused them to commit acts constituting felonies and to be

¹¹ Moreover, a diagnosis "in remission" "does not preclude a finding that the person continues to suffer from the condition and requires further detention." *Klein*, 156 Wn.2d at 118.

declared dangerous to society. See Jones v. United States, 463 U.S. at 366. The revocation/modification procedure of RCW 10.77.190 is premised on the presumption of continuing mental illness in order to efficiently and effectively determine whether an insanity acquittee violated the conditions of release or is dangerous. Derenoff, 182 Wn. App. at 468. Requiring the State to make a renewed showing of mental illness at the revocation hearing, as Beaver argues, would render the revocation process wholly inefficient. It would also transform every revocation hearing into a recommitment trial with *the State* having to prove insanity. This would be inconsistent with this Court's holding in State v. Jones, and with over 100 years of case law establishing the presumption of insanity.

In addition, the procedural safeguards of RCW 10.77.140, .150 and .200 serve to insure against the concerns expressed by the trial court in January 2013 that Beaver was merely being detained rather than treated. Indeed, following revocation in January 2013, Beaver petitioned for both a conditional release and a final discharge, both of which were granted by the trial court and by agreement of the parties. The procedures under chapter 10.77 RCW functioned as intended in accordance with procedural due process, and Beaver's claims to the contrary should be rejected.

b. The Presumption Of An Acquittee's Continued Insanity Does Not Violate Substantive Due Process.

Beaver also argues that his substantive due process rights were violated because Foucha requires the trial court to make a finding of mental illness in order to revoke a conditional release. Beaver's argument fails to consider that once he was found to be NGRI, meaning that he is both mentally ill and dangerous, that finding of mental illness is a verity. The presumption of that verity's continued existence at a later date does not violate substantive due process. *See Jones*, 463 U.S. at 363-64; *see also State v. McCuiston*, 174 Wn.2d 369, 388-89, 275 P.3d 1092 (2012). Substantive due process requires periodic review of the insanity acquittee's suitability for release once found mentally ill and dangerous, which the statute certainly provides. It does not require that mental illness must be re-proven whenever a possible revocation is being considered by the trial court.

Put simply, if the presumption of insanity continues from acquittal to final discharge, the presumption of insanity necessarily continues during conditional release under RCW 10.77.150 and during revocation under RCW 10.77.190. Neither of these statutes requires inquiry into the current mental status of the insanity acquittee; both require a finding regarding current dangerousness. Before ordering conditional release, the trial court

is to consider “whether or not the person may be released conditionally without substantial danger to other persons or substantial likelihood of committing criminal acts jeopardizing public safety or security.” RCW 10.77.150(3)(c). Similarly, the relevant question at a revocation hearing is whether “the conditionally released person did or did not adhere to the terms and conditions of his release, or whether person presents a threat to public safety.” RCW 10.77.190(4). Clearly, if a conditional release based on the presumption of continued insanity does not violate substantive due process, revocation of that conditional release does not either.

A conditional release under RCW 10.77.150 is appropriate for a person who remains mentally ill and dangerous, but whose dangerousness is mitigated by *compliance with conditions* designed to prevent dangerous behavior.¹² Reid, 144 Wn.2d at 630. If the conditions mitigate the acquittee’s dangerousness, it follows that the conditions are related to the continuing presumption of the mental illness that makes the acquittee dangerous. Thus, revoking a conditional release based on a violation of

¹² As an aside, in State v. Dang, 178 Wn.2d 868, 312 P.3d (2013), this Court stated that Dang had been found “nondangerous” at the time of his insanity acquittal. This is incorrect. In accordance with RCW 10.77.110(3), the trial found that Dang was not a “substantial” danger and therefore eligible for a conditional release. This does not mean the same thing as “nondangerous.” If Dang truly was “nondangerous,” the trial court would have been required to order his unconditional release, despite his continuing mental illness. See Reid, 144 Wn.2d at 629.

those conditions does not “shock the conscience,” and due process is satisfied.

In Beaver’s case, the repeatedly-imposed conditions prohibiting drug and alcohol use were directly related to the mental illness diagnosed in 2004. Accordingly, it was presumed that Beaver’s polysubstance dependence constituted his continued mental illness. Thus, revocation of his conditional release based on violations of conditions directly related to Beaver’s specific mental illness and the dangerous behavior that resulted in an insanity acquittal in the first place comported with substantive due process.

In Colorado, very similar facts established that revocation of a conditional release based solely on a violation of a condition, without a renewed finding of mental illness, does not violate substantive due process. In People v. Garlotte, 958 P.2d 469 (Colo. Ct. App. 1997),¹³ the court revoked Garlotte’s conditional release based solely on violation of conditions of release (three positive urine screens) and made no findings

¹³ Although the Colorado statutes governing conditional release and subsequent revocation differ from RCW 10.77.150 and .190 in other respects, the Colorado revocation statute, like RCW 10.77.190, provides for revocation based solely on a violation of an imposed condition and is, therefore, instructive here.

regarding Garlotte's mental illness or dangerousness.¹⁴ On appeal, Garlotte argued that this violated due process.

The Colorado Court of Appeals disagreed, and held that revoking a conditional release based solely on violation of a condition did not violate substantive due process, because the conditions of release were directly related to the mental illness and dangerous behavior upon which the insanity acquittal was based in the first instance. As the court explained:

Due process does not require courts to ignore compelling evidence that violent symptoms arising from a defendant's mental illness may be resurfacing as a result of defendant's noncompliance with a reasonable condition, such as the prohibition against nonprescription drugs or alcohol. [. . .]

Therefore, we hold that an insanity acquittee's conditional release may be revoked . . . solely because a condition has been violated without infringing upon due process, provided that the condition violated bears a substantial relationship to the prevention of recurring mental illness or the management of an insanity acquittee's existing mental illness, and to the prevention of future dangerousness arising from the mental illness.

Garlotte, 958 P.2d at 477.

Beaver's revocation in January 2013 was also based on the violation of conditions directly related to his mental illness and dangerous behavior that resulted in his insanity acquittal and civil commitment in 2005. As in Garlotte, revocation of Beaver's conditional release did not violate substantive due process.

¹⁴ Garlotte was a diagnosed schizophrenic who became delusional after abusing illicit drugs and shot a woman because he thought she belonged to a cult.

Chapter 10.77 RCW is not a statute that locks up insanity acquittees in an institution and throws away the key. Revoking Beaver's conditional release due to alcohol use and dangerous behavior does not shock anyone's conscience. Indeed, if the trial court had failed to revoke Beaver's conditional release under these circumstances, given the basis for Beaver's insanity acquittal, the conditions he violated, and the presumption of his continued insanity, such failure would have shocked the conscience.

D. CONCLUSION

The revocation of Beaver's conditional release in January 2013 violated neither procedural nor substantive due process. This Court should reject Beaver's invitation to overturn over a century's worth of statutory and common law, and should reaffirm that the presumption of insanity is constitutionally sound.

DATED this 4th day of May, 2015.

Respectfully submitted,

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APPENDIX

1. January 2005, Dr. Campbell (WSH) made the following diagnoses:

Axis I: Psychotic Disorder NOS specified by self-report
 Depressive Disorder NOS specified by history
 Cocaine Dependence by history
 Cannabis Abuse by history (rule out Dependence)
 Alcohol Abuse by history
 Posttraumatic Stress Disorder by history
 Rule out Major Depressive Disorder, Severe, with Psychotic Features
 Rule out Cocaine-Induced Psychotic Disorder
 Rule out Malingering

Axis II: Antisocial Personality Disorder

CP 295.

2. July 2006, WSH sent a letter to the court containing the following diagnoses:

Axis I Depressive Disorder NOS, by History,
 Post Traumatic Stress Disorder by History, in
 Remission,
 Cocaine Dependence, Marijuana Abuse, Alcohol Abuse

Axis II Antisocial Personality Disorder

WSH prescribed Beaver Zoloft (200 mg per day) for depression and Buspar (45 mg per day) for anxiety. CP 348.

3. December 2006, WSH sent a letter to the court containing the following diagnoses:

Axis I Depressive Disorder NOS, by History,
 Post Traumatic Stress Disorder by History, in
 Remission,
 Cocaine Dependence, Marijuana Abuse, Alcohol Abuse

Axis II Antisocial Personality Disorder

Beaver was prescribed Duloxetine (60 mg per day) for depression, Trazodone (50 mg) for sleep, and Clonidine (0.2 mg) for nightmares. CP 354.

4. May 2008, WSH sent a letter to the court including the following diagnoses:

Axis I Depressive Disorder NOS, by History,
 Post Traumatic Stress Disorder by History, in
 Remission,
 Cocaine Dependence, Marijuana Abuse, Alcohol Abuse
Axis II Antisocial Personality Disorder

Beaver was being prescribed Duloxetine (60 mg per day) for depression, Trazodone (50 mg) for sleep and Clonidine (0.2 mg) for nightmares. CP 99.

5. June 2010, WSH sent a letter to the court including the following diagnoses:

Axis I: Bipolar Disorder, mixed type,
 PTSD
 Polysubstance Abuse including cocaine and
 marijuana
Axis II Antisocial Personality Disorder

CP 358-359.

6. November 2010, Pioneer Counselling Services discharged Beaver with the following diagnoses:

Axis I Cocaine Dependence with Physiological Dependence
 Opioid Dependence, with Physiological Dependence
 Alcohol Dependence, with Physiological Dependence
 Nicotine Dependence, with Physiological Dependence
 PTSD
 Mood Disorder NOS
 Rule out Bipolar II Disorder with Psychotic Features
Axis II Personality Disorder NOS with Antisocial Traits

CP 102. Pioneer recommended that Beaver continue to continue taking the following medications: Atenol (100mg), Amlodipine (20mg), Buspirone (30mg), Simuastan (20mg), Omeprazole (20 mg) and HTCZ (12.5mg). CP 102-103.

7. March 2011, WSH sent a letter to the court stating that Beaver was mentally stable and no longer in need of treatment for a major mental illness, and that Beaver's problem at the time of admission was drug-induced psychosis. CP 368. PSRP and Dr. Brian Judd disagree. CP 251-260. Dr. Brendon Scholtz agrees with Judd's diagnosis, but supports final discharge. CP 262-269.

8. July 2011, Beaver stipulated mid-trial that he met the criteria for civil commitment under chapter 10.77 RCW, which necessarily includes a continuing mental illness, in order to obtain an agreed conditional release. CP 104-109.

9. January 2012, the State seeks revocation of conditional release. WSH states that Beaver has already received maximum benefits from treatment and that his symptoms were in "remission." CP 119.

10. October 2012, Sound Mental Health reported the following diagnoses:

| | |
|----------|--------------------------------------------------------------------|
| Axis I: | Bipolar I Disorder, Most Recent Episode Mixed in Partial Remission |
| | PTSD |
| | Cocaine Dependence |
| | Alcohol Dependence |
| Axis II: | Deferred |

CP 167.

11. May 2013, Beaver filed for conditional and unconditional release, pursuant to RCW 10.77.200(3).

12. October 2013, Agreed order of conditional release.

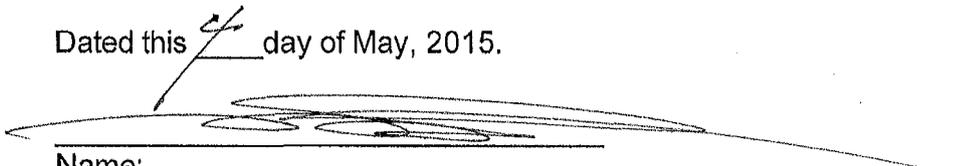
13. May 2014, Beaver granted unconditional release. WSH and PRSP support unconditional release. No longer mentally ill, but remains dangerous. No psychosis following drug and alcohol use in December 2013.

Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to Casey Grannis, the attorney for the appellant, at Grannisc@nwattorney.net, containing a copy of the SUPPLEMENTAL BRIEF OF RESPONDENT, in State v. Rickey Arelious Beaver, Cause No. 91112-6, in the Supreme Court, for the State of Washington.

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

Dated this 4 day of May, 2015.


Name:
Done in Seattle, Washington

OFFICE RECEPTIONIST, CLERK

To: Ly, Bora
Cc: Bogar, Alison; Vitalich, Andrea; 'grannisc@nwattorney.net'; 'Patrick Mayovsky'
Subject: RE: Rickey Beaver/91112-6

Received 5-4-2015

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Ly, Bora [mailto:Bora.Ly@kingcounty.gov]
Sent: Monday, May 04, 2015 2:27 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: Bogar, Alison; Vitalich, Andrea; 'grannisc@nwattorney.net'; 'Patrick Mayovsky'
Subject: Rickey Beaver/91112-6

Good afternoon,

Attached please find the Supplemental Brief of Respondent to be filed in the above-subject case.

Please let me know if you should have difficulties opening the attachment.

Thank you,

Bora Ly
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For

Alison Bogar
Senior Deputy Prosecuting Attorney
Attorney for Respondent