

No. 91992-5

No. 45512-9-II

THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

In re the Detention of:

MICHAEL SEASE,

Petitioner.

ON DISCRETIONARY REVIEW FROM THE SUPERIOR COURT
OF THE STATE OF WASHINGTON FOR PIERCE COUNTY

REPLY BRIEF OF PETITIONER

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A. ARGUMENT

Where psychiatric experts, including every expert retained by the State, can longer diagnose a person as suffering either of the two disorders upon which the jury determined to commit the person, has the person's "condition changed?" As discussed in Mr. Sease's prior briefing the answer is plainly "yes." The trial court, however, answered the question in the negative. The commissioner's ruling properly recognized this is both probable and obvious error.

Rather than offer legal argument to contrary, the majority of the State's response is simple a lengthy recitation of Mr. Sease's history coupled with the State's opinion. Indeed, from page 9 to page 24, more than 50% of what purports to be the State's argument, the State does not cite a single legal authority. Nominally this portion of the State's response includes the State's argument that it met its prime facie burden and its argument that Mr. Sease's condition has not changed. Because they are wholly unsupported by any citation to relevant legal authority this Court should disregard them. *State v. Dennison*, 115 Wn.2d 609, 629, 801 P.2d 193 (1990). Instead, this Court may assume that because the State has provided no legal authority to support these

claims it has found none. *Blue Diamond Grp., Inc. v. KB Seattle 1, Inc.*, 163 Wn. App. 449, 459 n.3, 266 P.3d 881 (2011).

The remainder of the State's argument rests upon its continued misreading of the Supreme Court's decision in *State v. Klein*, 156 Wn.2d 103, 124 P.3d 644 (2005). As set forth at length in Mr. Sease's opening that case does not address the issue presented here.

First, the petitioner there received the very sort of release trial which Mr. Sease requests and to which the State adamantly insists he is not entitled. Second, *Klien* found it significant that the statute at issue there specifically permitted continued confinement so long as any mental disease existed. 156 Wn.2d at 119. By contrast 71.09 RCW permits confinement only so long as "the mental illness" of confinement persists. *In re the Detention of Young*, 122 Wn.2d 1, 39, 857 P.2d 989 (1993). *Klien* is simply not the case the State believes it is or wishes it to be.

Mr. Sease was initially committed based upon his diagnoses of antisocial personality disorder and borderline personality disorder. At his commitment trial, the State's expert concluded those two diagnoses made Mr. Sease more likely than not to reoffend. The State's expert specifically told the jury that a third diagnosis, narcissistic personality

disorder did not make him more likely than not to reoffend. Based on that evidence the jury found Mr. Sease met the criteria for commitment.

After more than 5 years of commitment and treatment, Mr. Sease no longer meets the diagnostic criteria for either antisocial personality disorder or borderline personality disorder. Instead, the only remaining diagnosis is the narcissistic personality disorder which the State told the jury did not merit commitment.

Here, "the" mental illnesses have been resolved as a result of treatment. The State does not dispute that Mr. Sease no longer meets the criteria of either diagnoses which led to his commitment. Because the jury did not commit Mr. Sease based upon his narcissistic personality disorder, and was in fact told that disorder did not warrant commitment, the State may not now justify his continued confinement based upon that disorder. That is not to say the State could not seek to commit Mr. Sease based upon a newly-minted diagnosis, just that due process dictates that the State do so at a new trial and not simply based upon the opinion of the State's evaluators.

B. CONCLUSION

For the reasons above, this Court should reverse the trial court's order and direct the trial court to grant Mr. Sease trial under RCW 71.09.090.

Respectfully submitted this 13th day of October, 2014.



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DIVISION TWO**

IN RE THE DETENTION OF)	
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MICHAEL SEASE,)	NO. 45512-9-II
)	
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PETITIONER.)	

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