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SUPREME COURT OF THE STATE OF WASHINGTON

In re the Detention of:

MICHAEL SEASE,

Petitioner.

STATE'S SUPPLEMENTAL BRIEF

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I. INTRODUCTION

Michael Sease was civilly committed to the Special Commitment Center (SCC) in 2007 based on a verdict finding him to be a sexually violent predator (SVP) after convictions for rape and kidnapping, and an extended history of mental illness. At his 2013 annual review, although his mental condition was unchanged and he remained unsuccessful in sex offender treatment, the reviewing psychologist described the diagnosis slightly differently—as a Narcissistic Personality Disorder with Antisocial and Borderline features, instead of as Narcissistic, Antisocial, and Borderline Personality Disorders. CP 27, 256.

This Court recently held that variation in diagnoses does not establish a change in condition for an SVP. This is because “the subjective and evolving nature of psychology may lead to different diagnoses that are based on the very same symptoms, yet differ only in the name attached to it.” *In re Pers. of Restraint of Meirhofer*, 182 Wn.2d 632, 644, 343 P.3d 731 (2015) (internal quotation marks omitted). His expert offered nothing beyond an assertion that the difference in nomenclature meant Mr. Sease had undergone the requisite change, and a claim that his mere presence at the SCC meant he was in the “treatment milieu,” and this mere presence constituted participation in treatment. Mr. Sease is not entitled to a new trial.

II. ISSUES

1. Did the State meet its prima facie burden by presenting evidence that Mr. Sease continues to suffer from a personality disorder that makes him likely to engage in predatory acts of sexual violence if not confined?

2. Did the trial court properly conclude that Mr. Sease failed to establish probable cause to believe that his condition has “so changed” as a result of continuing treatment that he no longer meets the definition of an SVP, where Mr. Sease has been expelled from sex offender treatment and remains an untreated sex offender?

III. STATEMENT OF THE CASE

Even before his convictions for first degree kidnapping and first degree rape of a young girl and a young woman, Mr. Sease’s mental instability was abundantly clear.¹ His first known sexual offense came at age 19, a crime charged as a rape but resolved on a plea to third degree assault when the victim did not want to go to court. CP 266. Following other brushes with the law, he was admitted to Western State Hospital after preparing to jump from the Narrows Bridge. CP 268-69. His two convictions for sex offenses stemmed from separate events in 1987, in

¹ Mr. Sease’s background is more thoroughly described in the Opening Brief of Respondent at pages 1-6, and by the Court of Appeals. *In re Det. of Sease*, 190 Wn. App. 29, 32-37, 357 P.3d 1088 (2015).

which he first kidnapped and attempted to rape a 15-year-old girl, and later raped and assaulted a 19-year-old new mother whom he forced into his car and raped at knife-point, telling her that he had just exposed her to AIDS.² CP 266-67.

The State filed a petition shortly before his scheduled release from prison alleging that Mr. Sease was an SVP. CP 1-2. The State supported its initial petition to commit Mr. Sease as an SVP with a report by psychologist Dr. Dennis Doren. CP 25-32. He described Mr. Sease's condition in terms of an inability to deal with others and a "repetitive pattern of self-harm." CP 29. Dr. Doren also described property destruction, threats, and other aggressive behavior that Mr. Sease could not control even in an institutional setting. CP 30. Dr. Doren diagnosed Mr. Sease with three personality disorders: Borderline Personality Disorder, Narcissistic Personality Disorder, and Antisocial Personality Disorder. Dr. Doren concluded that "Mr. Sease's Borderline Personality Disorder and his Antisocial Personality Disorder predispose him to commit sexually violent acts, while the Narcissistic Personality Disorder does not specifically predispose him but solely is of a facilitating role in

² While incarcerated, Mr. Sease accumulated about 250 infractions, 200 of which were major infractions. CP 265. Many of these incidents involved antisocial treatment of other inmates and attempts to manipulate his treatment in the institutional setting. These included self-mutilation, parasuicidal behavior, theft, and setting fires. He expressed open contempt for others, and was generally unwilling or unable to participate in treatment programs. CP 265-66.

that regard.” CP 27. A unanimous jury committed Mr. Sease in 2007. He has been detained at the SCC since then, with his detention reviewed every year. RCW 71.09.070.

The State met its burden of showing a prima facie case that Mr. Sease continues to meet the definition of an SVP at his 2013 review through an expert report. CP 248-74. Dr. Kirk Newring described similar behaviors to those cited by Dr. Doren, including aggressive behavior toward SCC residents and staff. He was hostile toward other residents and was first suspended, then terminated, from a preliminary treatment group for an inability to control his behavior toward other members. CP 250-51. He remained unable to discuss the sexual motivations for his crimes, maintaining that all he did was fail to pay a prostitute. CP 252, 257. His pattern of disciplinary violations continued, accruing numerous violations during the review period for behavior that included conflicts with other residents and failures to obey SCC rules. CP 252-53.

Mr. Sease remains an untreated sex offender. The therapy in which he has participated, titled “Power to Change” and “TruThought,” are simply “specialty groups” preliminary to actual sex offender treatment.³ Mr. Sease was unsuccessful in Power to Change, and did not participate in

³ Washington State Inst. for Pub. Policy, *Special Commitment Center for Sexually Violent Predators: Potential Paths Toward Less Restrictive Alternatives, Revised 7* (Jan. 2013), <http://www.wsipp.wa.gov/rptfiles/13-01-1101r.pdf> (last visited Jan. 14, 2016).

a cohort group. CP 254. Mr. Sease does not accept the “sex offender” label and described his crimes as efforts to defraud prostitutes. CP 254, 257. His defensiveness in attempts at treatment has prevented him from participating in the group process. CP 254, 257. Dr. Newring questioned whether any acknowledgment of sex offenses on his part was sincere, or merely calculated to achieve release. CP 257.

Like Dr. Doren, Dr. Newring found features of Borderline and Antisocial Personality Disorders, but characterized them as features⁴ associated with a Narcissistic Personality Disorder. CP 256. Dr. Newring also found features of Sadistic and Paranoid Personality Disorders. *Id.* He diagnosed Mr. Sease with Alcohol Dependence, as had Dr. Doren, but also found that Mr. Sease suffers from a Cognitive Disorder, Not Otherwise Specified, and Borderline Intellectual Functioning. *Id.* Finally, Dr. Newring included a “rule out” diagnosis of Paraphilia.⁵ *Id.* Dr. Newring concluded:

⁴ The term “features” is used when an individual presents with aspects of specified disorders, but does not meet the diagnostic criteria for the full diagnosis. *See* CP 62 (earlier review report, concluding that Mr. Sease “exhibits a complex array of symptoms from Antisocial Personality Disorder and Borderline Personality Disorder,” listing those features). An earlier review report by Dr. Rob Saari concluded “Mr. Sease would meet the full criteria for Antisocial Personality Disorder if he more clearly had symptoms of Conduct Disorder prior to the age of 15 years.” CP 62 n.13.

⁵ The phrase “‘rule out’ is typically used to identify an alternative diagnosis that is being actively considered, but for which sufficient data has not yet been obtained.” *Meirhofer*, 182 Wn.2d at 641 n.3 (quoting Alvin E. House, *DSM-IV Diagnosis in the Schools* 33 (2002)). Mr. Sease’s expert described the term incorrectly. CP 317.

Mr. Sease does not appear to have had a meaningful and durable change in his behavior and disposition during the current review period. While he sees himself as having made some incremental gains in empathy and peer relations, Mr. Sease's diagnostic constellation from the previous year appears consistent with his current behavior and functioning.

CP 256. Dr. Newring found that Mr. Sease "still presents as a challenging individual and has significant barriers to overcome before he should be considered ready for a less restrictive setting." CP 262.

Mr. Sease offered the opinion of his own psychologist, Dr. Brian Abbott. CP 290-328. Dr. Abbott acknowledged that Mr. Sease had not successfully participated in treatment specific to sex offenses, CP 308-12, but nonetheless contended that Mr. Sease participated in an amorphous "treatment milieu" at the SCC. CP 314-16. In essence, Dr. Abbott suggested that, simply by residing at the SCC and minimally participating in ancillary therapy that did not specifically address sex offenses, Mr. Sease sufficiently participated in relevant treatment to the degree that his mental condition changed so significantly that he is no longer an SVP. *Id.* Dr. Abbott contended that the difference between Dr. Doren's diagnosis at the time of original commitment⁶ and Dr. Newring's 2013 diagnosis⁷ demonstrated a change in Mr. Sease's condition resulting "from his positive responses to continuing participation in treatment." CP 290.

⁶ Narcissistic, Borderline, and Antisocial Personality Disorders. CP 27.

⁷ Narcissistic Personality Disorder with Borderline, Antisocial, Sadistic, and Paranoid features. CP 256.

Both the trial court and the Court of Appeals concluded that the State presented a prima facie case showing that Mr. Sease still met the definition of an SVP, and that Mr. Sease had not established probable cause to believe that his condition had so changed as a result of treatment that he was entitled to a new civil commitment trial.

IV. ARGUMENT

A. Standard of Review

The SVP Act defines an SVP as “any person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility.” RCW 71.09.020(18). A person found by a jury to satisfy these criteria is committed indefinitely, but is “entitled to a written annual review by a qualified professional to ensure that he continues to meet the criteria for confinement.” *State v. McCuiston*, 174 Wn.2d 369, 379, 275 P.3d 1092 (2012) (citing RCW 71.09.070).

Under the annual review process, “there are two possible statutory ways for a court to determine there is probable cause to proceed to an evidentiary hearing.” *Meirhofer*, 182 Wn.2d at 643 (quoting *In re Det. of Petersen*, 145 Wn.2d 789, 798, 42 P.3d 952 (2002)). The first is “by deficiency in the proof submitted by the State.” *Id.* The other is “by

sufficiency of proof by [Mr. Sease] that he . . . no longer suffers from a mental abnormality or personality disorder or that any mental abnormality or personality disorder would not likely cause [him] to engage in predatory acts of sexual violence.” *Meirhofer*, 182 Wn.2d at 643 (internal quotation marks omitted). This Court reviews the trial court’s legal conclusions de novo. *Id.*

B. The State Made Its Prima Facie Case for Continued Confinement

Mr. Sease’s petition for review focuses on the second of the two means by which an SVP can seek a new civil commitment trial. He focuses on the question of whether the report of his own expert is sufficient to establish probable cause that his condition has “so changed” as a result of continuing participation in treatment that he no longer meets the definition of an SVP. Pet. at 1. That issue is not directed at the sufficiency of the State’s prima facie case; but he also alleges as a second issue that the difference between the phrasing of Mr. Sease’s diagnosis at the time of his initial commitment and at his 2013 review establishes a basis for a new trial. *Id.* Consideration of the State’s prima facie case in light of this Court’s recent decision in *Meirhofer* both resolves Mr. Sease’s second issue and provides necessary context for his first issue.

1. The State's expert report established the State's prima facie case

The State established its prima facie case for Mr. Sease's continued civil commitment through Dr. Newring's report. He concluded that "Mr. Sease does not appear to have had a meaningful and durable change in his behavior and disposition during the current review period." CP 256. "There is little doubt that Mr. Sease presents with a significant overall pattern of personality dysfunction that has severely impacted his ability to function without substantial difficulties in both the community and within institutional settings." CP 257; *see also supra* pp. 5-6.

Mr. Sease argues that Dr. Newring did not conclude that Mr. Sease continues to meet the definition of an SVP. Pet. at 3. But this assertion is contrary to Dr. Newring's final conclusion that "Mr. Sease also continues to present with a mental condition(s) that seriously impairs his ability to control his sexually violent behavior." CP 263. He continued, "it is my opinion that Mr. Sease's condition has not so changed such that conditions can be imposed that would adequately protect the community, and a less restrictive alternative would not, at the present time, be in his best interest." *Id.* "Overall and despite his setbacks, it appears that Mr. Sease is continuing to progress, albeit he still presents as a challenging individual and has significant barriers to overcome before he could be considered

ready for a less restrictive setting.” CP 262. Dr. Newring thus opined that Mr. Sease continues to meet the statutory criteria.

Dr. Newring also based his conclusion on both a static and a dynamic risk assessment. CP 257-62. Cautioning that Mr. Sease’s “moderately high risk category” may under-represent his true risk of reoffending,⁸ Dr. Newring concluded that Mr. Sease had “not shown a durable change in dynamic risk over the current review period.” CP 258. This was so in part because Mr. Sease “has been so resistant to self-disclosure and related treatment.” *Id.* Mr. Sease was found to have nearly identical actuarial results to that of Mr. Meirhofer, whose continued civil commitment this Court so recently upheld. *Sease*, 190 Wn. App. at 46 (citing *Meirhofer*, 182 Wn.2d at 640).

Dr. Newring’s report can thus only be viewed as reaching the conclusion that Mr. Sease continues to meet the definition of an SVP. He concludes that Mr. Sease’s civil commitment “is to continue . . . to ensure care, control and treatment until his condition has changed such that he no longer meets the definition of sexually violent predator.” CP 262-63.

⁸“Static tests such as the Static-99R underestimate the probability of future sexual misconduct because they do not actually measure the probability that an offender will commit another sexual offense; they instead predict whether an offender will be caught for a new sexual offense by being arrested, convicted, or, in some cases, by self-report of recidivism.” *Meirhofer*, 182 Wn.2d at 640 n.4.

2. Mr. Sease’s current diagnosis of Narcissistic Personality Disorder with Borderline, Antisocial, Sadistic, and Paranoid Features describes the same condition as his diagnosis at commitment of Narcissistic, Borderline, and Antisocial Personality Disorders

The core of Mr. Sease’s argument is that because his personality disorder was once described as Narcissistic, Borderline, and Antisocial, but is now described as Narcissistic with Borderline, Antisocial, Sadistic, and Paranoid features, the underlying condition described by those nuanced terms must be different. This Court rejected this very notion in *Meirhofer*. “[T]he subjective and evolving nature of psychology may lead to different diagnoses that are based on the very same symptoms, yet differ only in the name attached to it.” *Meirhofer*, 182 Wn.2d at 644 (quoting *State v. Klein*, 156 Wn.2d 103, 120, 124 P.3d 644 (2005)).

An SVP is “any person who has been convicted of . . . a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility.” RCW 71.09.020(18). It is undisputed that Mr. Sease has been currently diagnosed by a licensed forensic psychologist with a personality disorder with antisocial and borderline features. *See Meirhofer*, 182 Wn.2d at 643-44; CP 256.

Mr. Sease’s diagnoses at the time of original commitment and at his 2013 review describe the same condition. At both his initial

commitment and at the 2013 review, the psychologists described Mr. Sease's condition in terms of a broad inability to deal with others, including aggressive behavior toward peers and staff. CP 29-30 (Dr. Doren, 2005); CP 250-53 (Dr. Newring, 2013). Both experts described Mr. Sease as believing himself to be entitled to special treatment, as unable to obey rules or participate meaningfully in sex offender treatment, and as being the subject of frequent discipline even in the controlled setting of an institution. CP 29-30, 253-57.⁹

Both psychologists attached strikingly similar labels to the condition. Dr. Doren grounded his conclusion that Mr. Sease is an SVP on his findings of Antisocial and Borderline Personality Disorders. CP 27. Dr. Newring found that Mr. Sease exhibited "prominent features of borderline, narcissistic, antisocial, sadistic, and paranoid" disorders, but diagnosed them in conjunction with a finding of Narcissistic Personality Disorder. CP 257. The diagnoses of Narcissitic, Antisocial, and Borderline

⁹ Dr. Doren described Mr. Sease as "suffer[ing] from a long-term maladaptive pattern of behavior involving instability in his mood, interpersonal relationships, and self-image." CP 27. He additionally displayed "a pattern of disregard for and violation of the rights of others." *Id.* This included aggressive and provocative behavior toward his peers, and a failure to participate in specific sex offender treatment. CP 30. After noting Dr. Doren's assessment, Dr. Newring observed "specific indicators of personality disorder, include Mr. Sease's acknowledged history of manipulation of others for personal gain, tenuous and chaotic interpersonal relationships, interpersonal entitlement, poor showing of empathy, verbal and physical behavior that appears intended to cause harm or hurt to others, . . . grandiose self-worth, and difficulty following rules." CP 257. His pattern of disciplinary violations originally noted by Dr. Doren continued during the review period, including multiple behavioral reports. CP 252-53.

Personality Disorders, CP 27, and Narcissistic Personality Disorder with Antisocial and Borderline features, CP 257, can easily encompass the conditions described by both evaluators. A Narcissistic Personality Disorder generally describes a person with a grandiose sense of self-worth, including a belief in being entitled to special treatment, intense personal relationships, and self-destructive behavior. American Psychiatric Ass'n, *Disagnostic & Statistical Manual of Mental Disorders* 661 (2000) (4th ed., Text Revision, DSM-IV-TR).¹⁰ Antisocial Personality Disorder also describes an inability to comply with rules or social norms, as well as an inability to deal sociably with others. *Id.* at 649-50. And Borderline Personality Disorder is characterized by an inability to get along with others and unstable personal relationships. *Id.* at 654. Each of these terms can reasonably encompass the conditions described by Dr. Doren in 2005 and Dr. Newring in 2013. CP 29-30, 250-57. The Court of Appeals aptly described these terms as amounting to “an evolving diagnosis based on the same symptoms.” *Sease*, 190 Wn. App. at 45.

Casting his diagnosis in terms of borderline and antisocial *features* within a Narcissistic Personality Disorder does not mean that Dr. Newring was describing a different *condition* than Dr. Doren described. As another reviewing psychologist explained shortly after Mr. Sease was committed,

¹⁰ The professional definitions of the personality disorders at issue are quoted in full in the appendix to this brief, as well as in the Opening Brief of Respondent below.

he “meets the full criteria for Narcissistic Personality Disorder, and he exhibits a complex array of symptoms from Antisocial Personality Disorder and Borderline Personality Disorder.” CP 62. Indeed, he “would meet the full criteria for Antisocial Personality Disorder if he more clearly had symptoms of Conduct Disorder prior to the age of 15 years.” CP 62 n.15. The various psychologists who have evaluated Mr. Sease over the years agree that there is an interplay between his alcohol abuse, his cognitive impairment, and the various personality disorders or personality-disordered traits with which he has been diagnosed. *See Sease*, 190 Wn. App. at 32-37.

As the Court of Appeals concluded:

The diagnoses that formed the basis of Sease’s commitment—borderline personality disorder; antisocial personality disorder; narcissistic personality disorder; and alcohol dependence—*bears a “sufficient connection”* to Dr. Newring’s diagnoses of: narcissistic personality disorder with borderline, antisocial, sadistic and paranoid features; cognitive disorder NOS; rule-out paraphilia; cognitive disorder NOS; borderline intellectual functioning; and alcohol dependence in a controlled environment.

Sease, 190 Wn. App. at 45 (emphasis added). “The DSM-IV-TR candidly acknowledges . . . that each category of mental disorder is not a completely discrete entity.” *Klein*, 156 Wn.2d at 120. This Court accordingly does not construe a semantic difference in the way a condition is described as demonstrating that the condition in fact changed. *Id.* at 121.

Dr. Doren and Dr. Newring described the same underlying condition, even if “the subjective and evolving nature of psychology” leads them to cast their diagnoses in different terms. *Meirhofer*, 182 Wn.2d at 644; *see also Sease*, 190 Wn. App. at 45. This Court should affirm the decision of the lower courts.

C. Mr. Sease Failed to Establish Probable Cause that He Has “So Changed” as the Result of Treatment to Grant Him a New Civil Commitment Trial

Mr. Sease argues that the report of his own expert, Dr. Brian Abbott, supports a new trial. Mr. Sease bears the burden of “establish[ing] probable cause to believe his condition has so changed that he no longer meets the definition of a SVP.” *McCuiston*, 174 Wn.2d at 380 (internal quotation marks omitted). This probable cause showing requires evidence of a substantial change in the person’s mental condition such that he or she no longer meets the definition of an SVP. RCW 71.09.090(4)(a). Mr. Sease bears the further burden of showing that such a change was “brought about through positive response to continuing participation in treatment.” RCW 71.09.090(4)(b)(ii); *see also McCuiston*, 174 Wn.2d at 391-92 (upholding statutory requirements).

Mr. Sease has failed to meet his burden. Dr. Abbott’s report does not set forth probable cause for concluding that Mr. Sease’s *condition* has changed, but only that his current diagnosis is phrased differently than his

earlier diagnosis. CP 290. And Dr. Abbot did not establish that any change in Mr. Sease was “brought about through positive response to continuing participation in treatment,” given his infrequent and disruptive efforts in treatment. RCW 71.09.090(4)(b)(ii).

1. By relying on a nuanced difference in diagnosis, Mr. Sease’s expert fails to demonstrate probable cause that his condition has changed

The sole basis Dr. Abbott offered for his conclusion that Mr. Sease’s condition has changed is that “Mr. Sease no longer suffers from the mental disorder or abnormality that was the basis for his 2007 civil commitment.” CP 290. The name attached to a diagnosis is distinct from the underlying condition described by that diagnosis, and so Dr. Abbott’s conclusion is legally insufficient to demonstrate that Mr. Sease’s *condition* has so changed as to entitle him to a new trial. *Meirhofer*, 182 Wn.2d at 644.

Mr. Sease’s argument before this Court is that “a change in diagnosis is evidence of a change in condition which if believed could permit a jury to find he no longer meets the definition of ‘sexually violent predator.’” Pet. at 7. This argument denies the very distinction on which this Court’s decision in *Meirhofer* turned. In order for Mr. Sease to be correct, then a change in diagnosis, in and of itself, would have to be evidence that the condition described through the diagnosis has changed.

This is precisely the notion that this Court rejected, because “the subjective and evolving nature of psychology may lead to different diagnoses that are based on the very same symptoms, yet differ only in the name attached to it.” *Meirhofer*, 182 Wn.2d at 644. The difference in diagnosis *cannot be*, by itself, sufficient evidence of a change in condition because the same condition can be described in more than one way.

To meet the standard, Mr. Sease must show evidence of a change in his underlying condition, not merely in the diagnosis used to describe that condition. Dr. Abbott’s report does not do this, failing to offer a supporting factual basis for finding a change in condition. Dr. Abbott acknowledges Mr. Sease’s continued behavior problems, but argues that because they are described as falling within a Narcissistic Personality Disorder they show a change in condition. CP 314. The connection between Mr. Seases’s diagnoses is even stronger than the connection that this Court recently found sufficient. *See Meirhofer*, 182 Wn.2d at 644.

The issue is not whether Mr. Sease has progressed at all, but whether he has shown probable cause that his condition has so changed that he is no longer an SVP. *In re Det. of Petersen*, 145 Wn.2d 789, 798, 42 P.3d 952 (2002). Dr. Abbott’s report only shows a continuation of the same condition that supported Dr. Doren’s diagnosis. *Compare CP 27 with CP 307-08*. In the review period at issue, this included a number of

disciplinary actions and “interpersonal wrangles.” CP 308.

Dr. Abbott explained that the difference in diagnoses formed the basis for his conclusion that Mr. Sease’s condition changed. CP 313. He explained that he began from the assumption that Dr. Doren’s diagnosis was correct, and then contrasted it with the 2013 diagnosis. *Id.*; *see also* CP 314. This methodology assumes the very notion that this Court rejected in *Meirhofer* and cannot support a determination of a changed condition. *Meirhofer*, 182 Wn.2d at 644.

2. Mr. Sease fails to demonstrate that his condition has improved as a result of continuing participation in treatment

Even if Dr. Abbott’s report revealed a change in Mr. Sease’s condition, this would be insufficient unless that change was “brought about through positive response to continuing participation in treatment.” RCW 71.09.090(4)(b)(ii). But in this very review period, “Mr. Sease has been suspended, and then expelled from his Power to Change Group.” CP 255. The SCC Clinical Director reported that “Mr. Sease appeared to present with significant treatment-interfering behaviors that were limiting his ability to effectively participate in sexual offense behavior specific treatment.” *Id.* Even after several opportunities, Mr. Sease was unable to complete assignments related to sex-offender specific treatment. *Id.* He has not completed any sex offender treatment and has shown little

progress in ancillary programs he sporadically attends, continuing to identify his chief problem as “being falsely accused” and fighting against the label “sex offender.” CP 254.

Acknowledging these failures, Dr. Abbott claims that Mr. Sease has received treatment by being within “the SCC therapeutic milieu.” CP 313-14. Dr. Abbott invents the “treatment milieu” in order to circumvent the legislature’s clear objective of incentivizing sex offender treatment. *McCuiston*, 174 Wn.2d at 394. Essentially, Dr. Abbott asserts that by being involuntarily committed to a secure facility, Mr. Sease is undergoing treatment. This position renders meaningless the 2005 amendments to RCW 71.09.090, as well as this Court’s interpretation of the statute expressed in *McCuiston*. See *In re Det. of Strand*, 167 Wn.2d 180, 189, 217 P.3d 1159 (2009) (applying maxim against deeming statutory language superfluous). Mr. Sease’s theory would entitle every committed SVP to a new trial by virtue of their presence at the SCC.

The purpose of requiring that change be demonstrated through treatment participation is to demand more of a committed person than that he or she reside at the SCC in the vicinity of sex offender treatment. “The legislature wanted to ensure that the statutory focus remains on treatment and did not want to remove the incentive for successful treatment participation.” *McCuiston*, 174 Wn.2d at 390. Mr. Sease has minimally

participated in some forms of ancillary therapy but, when he has been admitted to sex offender treatment groups, he has consistently failed and interfered with the treatment progress of other residents with disruptive behavior resulting in his expulsion. CP 308-12. The SCC has provided him individual therapy directed at his personality disorders, but he has not participated in treatment specific to sex offenses because he objects to hearing about sex in such sessions. CP 308, 312. Accordingly, Dr. Abbott's report is legally insufficient to support a new trial.

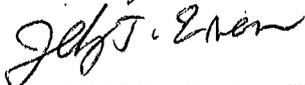
V. CONCLUSION

This Court should affirm the lower courts' conclusions that the State made a prima facie case that Mr. Sease continues to meet the definition of an SVP, and that Mr. Sease failed to establish probable cause to believe that his condition has "so changed" as a result of continuing participation in treatment that he no longer meets the definition of an SVP.

RESPECTFULLY SUBMITTED this 22nd day of January 2016.

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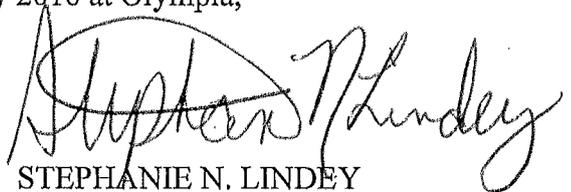
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CERTIFICATE OF SERVICE

I certify, under penalty of perjury under the laws of the state of Washington, that I served, via electronic mail, by agreement of the parties, a true and correct copy of the Notice of Association of Counsel, upon the following:

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APPENDIX

Antisocial Personality Disorder:

A) There is a pervasive pattern of disregard for and violation of the rights of others occurring since age 15 years, as indicated by three or more of the following:

1. failure to conform to social norms with respect to lawful behaviors as indicated by repeatedly performing acts that are grounds for arrest;
2. deception, as indicated by repeatedly lying, use of aliases, or conning others for personal profit or pleasure;
3. impulsivity or failure to plan ahead;
4. irritability and aggressiveness, as indicated by repeated physical fights or assaults;
5. reckless disregard for safety of self or others;
6. consistent irresponsibility, as indicated by repeated failure to sustain consistent work behavior or honor financial obligations;
7. lack of remorse, as indicated by being indifferent to or rationalizing having hurt, mistreated, or stolen from another;

B) The individual is at least age 18 years.

C) There is evidence of conduct disorder with onset before age 15 years.

D) The occurrence of antisocial behavior is not exclusively during the course of schizophrenia or a manic episode.

DSM-IV-TR at 649-50; *see also* Opening Brief of Respondent at 15-16 n. 3.

Borderline Personality Disorder:

A pervasive pattern of instability of interpersonal relationships, self-image, and affects, and marked impulsivity beginning by early adulthood and present in a variety of contexts, as indicated by five (or more) of the following:

(1) frantic efforts to avoid real or imagined abandonment. Note: do not include suicidal or self-mutilating behavior covered in Criterion 5.

(2) a pattern of unstable and intense interpersonal relationships characterized by alternating between extremes of idealization and devaluation

(3) identity disturbance: markedly and persistently unstable self-image or sense of self

(4) impulsivity in at least two areas that are potentially self-damaging (e.g., spending, sex, substance abuse, reckless driving, binge eating). Note: Do not include suicidal or self-mutilating behavior covered in Criterion 5.

(5) recurrent suicidal behavior, gestures, or threats, or self-mutilating behavior

(6) affective instability due to a marked reactivity of mood (e.g., intense episodic dysphoria, irritability, or anxiety usually lasting a few hours and only rarely more than a few days)

(7) chronic feelings of emptiness

(8) inappropriate, intense anger or difficulty controlling anger (e.g., frequent displays of temper, constant anger, recurrent physical fights)

(9) transient, stress-related paranoid ideation or severe dissociative symptoms.

DSM-IV-TR at 654; *see also* Opening Brief of Respondent at 16-17 n. 4.

Narcissistic Personality Disorder:

A pervasive pattern of grandiosity (in fantasy or behavior), need for admiration, and lack of empathy, beginning by early adulthood and present in a variety of contexts, as indicated by five (or more) of the following:

(1) has a grandiose sense of self-importance (e.g., exaggerates achievements and talents, expects to be recognized as superior without commensurate achievements)

(2) is preoccupied with fantasies of unlimited success, power, brilliance, beauty, or ideal love

(3) believes that he or she is “special” and unique and can only be understood by, or should associate with, other special or high-status people (or institutions)

(4) requires excessive admiration

(5) has a sense of entitlement, i.e. unreasonable expectations of especially favorable treatment or automatic compliance with his or her expectations

(6) is interpersonally exploitative, i.e., takes advantage of others to achieve his or her own ends

(7) lacks empathy: is unwilling to recognize or identify with the feelings and needs of others

(8) is often envious of others or believes that others are envious of him or her

(9) shows arrogant, haughty behaviors or attitudes.

DSM-IV-TR at 661; *see also* Opening Brief of Respondent at 19 n. 9.

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1. State's Supplemental Brief.

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