

COUNTY OF JEFFERSON
SUPERIOR COURT

2014 JUN -3 PM 1:56

NO. 46032-7-II

STATE OF WASHINGTON
BY *M*

**COURT OF APPEAL OF THE STATE OF WASHINGTON
DIVISION II**

CECIL DUDGEON, PRO SE,

Appellant,

v.

**STEVE BOYER, SHERIFF OF
KITSAP COUNTY,**

Respondent.

**APPELLANT'S REPLY TO RESPONDENT'S
OPENING BRIEF**

**CECIL DUDGEON
4381 STATE HIWAY 3W APT #10
BREMERTON, WA 98312
Telephone: (360) 912-4382**

TABLE OF CONTENTS

	<u>Page</u>
A. INTRODUCTION	1
B. ISSUES TO BE DECIDED	6
1) Is the Trial Court empowered to hear Mr. Dudgeon’s Petition For Writ Of Certiorari and, if the Court then finds the risk level classification of Mr. Dudgeon as assigned by the Kitsap County Sheriff’s Office to be unjustified, can the Court then order that classification to be rescinded and render the finding that should have been rendered by the lower tribunal?	6
2) Is the risk level designation assigned to Mr. Dudgeon By the Kitsap County Sheriff’s Office an appropriate designation based on relevant, substantial current evidence?	7
C. ARGUMENT	7
1) Mr. Dudgeon’s Case Should Be Remanded Back To The Trial Court With Instructions To Hear The Case And If The Trial Court Determines Mr. Dudgeon’s Risk Level Assignment By The Kitsap County Sheriff’s Office Was An Arbitrary and Capricious Decision Not Based On Substantial Current Evidence, The Trial Court Shall Weigh The Merits Of the Case And If the Proffered Substantial Evidence So Justifies, Mr. Dudgeon Shall Be Ordered Classified As A Risk Level I.	7
2) The Assignment Of A Risk Level III To Mr. Dudgeon By The Kitsap County Sheriff’s Office Was An Erroneous Decision Made Without Considering Any Of The Substantial Current Evidence Proffered By Mr.	14

Dudgeon And Should Be Ordered Rescinded By The Trial Court And Substituted With The Assignment Of The Appropriate Risk Level I, As Supported By That Evidence.

D. CONCLUSION

20

TABLE OF AUTHORITIES

TABLE OF CASES

<i>Doe v. Gregoire</i> , 960 F. Supp. 1478, 1483 (W.D.Wash 1997).....	16
<i>Federal Way v. King Cy</i> , 62 Wash. App. 530, 534 n.2, 815 P.2d 790 (1991).....	9
<i>Fuentes v. Shevin</i> , 407 U.S. 67, 81, 97 S.Ct. 1983-84 (1972).....	13
<i>Grisby v. Blodgett</i> , 130 F.3d 365 (9 th CIR 1997).....	9
<i>Hayes v. City of Seattle</i> , 131 Wash. 2d 706, 934 P.2d 1179 (1997).....	13
<i>In re. Det. of Enright</i> , 131 Wn. App. 706 (2006).....	11
<i>Kennedy v. Martinez-Mendoza</i> , 83 S.Ct. 554, 372 U.S. 144, 169 (U.S. 1963).....	17
<i>Logan v. Zimmerman Brush Co.</i> , 455 U.S. 422, 102 S.Ct. 1148, 71 L.Ed. 2d 265 (1982).....	13
<i>Lone Star Sec. & Video, Inc. v. City of Los Angeles</i> , 584 F.3d 1232-35 (9 th CIR 2009).....	13
<i>Lutheran Day Care v. Snohomish County</i> , 119 Wash.2d 91, 879 P.2d 746 (1992).....	13
<i>Responsible Urban Growth Group v. The City of Kent</i> , 123 Wash.2d 376, 868 P.2d 861, 866 (1994).....	9
<i>Rios v. Dept. of Labor and Industries</i> , 145 Wash.2d 453, 501 n.11, 39 P.3d 761 (2002).....	17
<i>Russell v. Gregoire</i> , 124 F.3d 1079, 1082 (9 th CIR 1997).....	19
<i>State v. Brosius</i> , 154 Wn.App. 714, 225 P.3d 1049 (Wn. App. Div. II,2010).....	12, 18
<i>State v. Ramos</i> , 149 Wash. App. 266, 202 P.3d 383, 387 (Wn. App. Div. 2, 2009).....	12

<i>State v. Sagestequi</i> , 135 Wash. 2d 67, 954 P.2d 1311 (1998).....	9
<i>U.S. v. Amaral</i> , 488 F.2d 1148, 1152 (9 th CIR 1973).....	3
<i>U.S. v. Juvenile Male</i> , 590 F.3d 924, 938 (9 th CIR 2009).....	17
<i>U.S. v. Lopez-Avila</i> , 678 F.3d 955, 964 (9 th CIR 2012).....	9
<i>U.S. v. Maroff</i> , 173 F.3d 1213 (9 th CIR 1999).....	13
<i>Vitek v. Jones</i> , 445 U.S. 480, 100 S.Ct. 1254, 63 L.Ed. 2d 552(1980).....	13

CONSTITUTIONAL PROVISIONS

Fifth Amendment to The United States Constitution	8, 13, 19
Eighth Amendment to The United States Constitution.....	9
Fourteenth Amendment to The United States Constitution.....	8, 13, 19

STATUTES

RCW 4.24.550.....	11, 12, 15, 16
RCW 7.16.040.....	11, 20
RCW 71.09.....	2, 3, 10
RCW 72.09.345.....	11, 12, 15, 16, 17

OTHER AUTHORITIES AND REFERENCES

Administrative Law and Practice, ADMLP § 2:23.....	13
Webster's New International Dictionary, Second Edition, Unabridged.....	11

A. INTRODUCTION TO REPLY

It was not Mr. Dudgeon's intention nor is it his desire to belabor incidents, or alleged incidents, of some 17 or 30 years past. However, Deputy Prosecutor Boe, representing Respondent, has included in her Opening Brief (Response), information that is either not true or misleadingly incomplete. If taken as factual these remarks could well prejudice the reader's mind set against Mr. Dudgeon, and therefore must be corrected at the outset. The referenced remarks are included under Ms. Boe's INTRODUCTION and under her STATEMENT OF THE CASE in her OPENING BRIEF (RESPONSE).

Under I. INTRODUCTION, page 1 of the BRIEF;

1) Ms. Boe stated that Mr. Dudgeon "...was convicted of the crime of Indecent Liberties with Forcible Compulsion. His victim was his own stepdaughter." That statement is not true. At the time of the alleged incident, December 30, 1997, Mr. Dudgeon was not married to the alleged victim's mother. That marriage had been announced as intended for late spring of 1998 but was moved up to January, 1998 (ATCH 1) due to the legal uncertainties precipitated by the allegation of "MS", the alleged victim. Mr. Dudgeon never saw MS again after December 30, 1997 except for brief court appearances. The consensual sexual relationship with MS began in 1990 when her brother, who was also living in the home, moved off to college leaving Mr. Dudgeon and the then 17 year old MS alone together in the home during the day due to the mother working. The relationship was on a sporadic basis occurring when MS elected to return home after establishing relationships with others and moving in with them before eventually terminating that relationship and returning home. There was never an incident of forced, threatened or nonconsensual sex between Mr. Dudgeon and MS as evidenced by the years of living at home between outside

relationships, with no complaints or indication of dissatisfaction made to anyone concerning events in her home life until she learned in late 1997 that Mr. Dudgeon and her mother planned to marry, move to Oregon but leave her in Washington State where MS, then 24 years old, had friends and self supporting employment. The alleged incident of December 30, 1997 followed, and that was the last contact of any kind between Mr. Dudgeon and MS except for the aforementioned brief court appearances.

2) Ms. Boe stated "... he refuses to participate in sexual offense treatment program,". That statement is not true. Throughout his confinement under the Department of Corrections and the Department of Social and Health Services, Special Commitment Center, SCC, Mr. Dudgeon maintained that he was willing to participate in a State run "treatment" program provided it was of an objective, individualized nature, as the statutes required, and that he wouldn't be expected to profess to have committed acts he never committed. State officials indicated the State program, then, could not accommodate Mr. Dudgeon and he was considered "unamenable to treatment".

3) Ms. Boe correctly stated that "As recently as 2005, he was diagnosed with pedophilia.". What Ms. Boe neglected to include was that that diagnosis of 2005 was made by the State's expert, Dr. Amy Phenix, who had to find a paraphilia diagnosis in order for Mr. Dudgeon to be considered for commitment under RCW 71.09. That diagnosis was based on uncorroborated, uncharged second and third hand allegations made by individuals Dr. Phenix never interviewed or even met. It was completely reversed by Dr. Phenix herself in 2012 when she "diagnosed" that Mr. Dudgeon did not meet commitment criteria, i.e. he did not have a paraphilia, a "mental abnormality", and he had a very low risk potential, 1-4% , to offend ATCH

11). This, without Mr. Dudgeon ever having spent a minute in any State run “treatment” program! This, of course, begs the question of whether Mr. Dudgeon ever had a paraphilia to begin with, as confirmed by Dr. Theodore Donaldson, Ph.D., a nationally recognized expert in the diagnosing and treating of sexual disorders, who did indepth evaluations of Mr. Dudgeon on two different occasions and arrived at the same question (ATCH 2).

It should be noted that at Mr. Dudgeon’s commitment trial he was represented by an attorney trying his first RCW 71.09 case and who did not have an expert testify on Mr. Dudgeon’s behalf to rebut the State expert’s opinions. This resulted in exactly what Amaral cautions against: The “...substantial danger of undue prejudice... because of the aura of special reliability and trustworthiness.”. U.S. v. Amaral, 488 F.2d 1148, 1152 (9th CIR 1973). Consequently the opinions expressed by the State’s expert stood unrebutted and Mr. Dudgeon was committed.

4) Ms. Boe stated that “...from 2001 through 2007 he was confined in Kitsap County Jail.”. This statement is not true. The only time Mr. Dudgeon spent in the Kitsap County Jail was the few days in association with transport and holding for RCW 71.09 proceedings. This can easily be verified by reference to official jail records.

5) Ms. Boe stated that “Mr. Dudgeon has only been among society for one year. One year of good behavior does not prove his case.”. Again, there is much Ms. Boe neglected to say. There was a three and a half year period of time between the date of the alleged incident of December 30, 1997, for which Mr. Dudgeon was immediately charged, and the eventual conviction and confinement on July 24, 2001 (ATCH 3). In that interim three and a half years Mr. Dudgeon was free to move about “among society” on his own recognizance and did so with

no problems, violations of law or complaints lodged against him. In addition, during all the years of Mr. Dudgeon's confinement there was never an incident where Mr. Dudgeon engaged in any anti-social or paraphiliac behavior, as confirmed in his official records. The aforementioned nationally recognized expert, Dr. Donaldson, observed in his referenced evaluation (ATCH 2) that if the inclination were there, the individual concerned would certainly engage in and manifest that abnormal behavior regardless of being confined.

As a direct result of the opinions expressed by Dr. Phenix in her evaluation of Mr. Dudgeon in 2012, he was released from the SCC unconditionally to be "among society" (ATCH 11) and has been since February 12, 2013 where he has gone about a problem free routine living schedule under the least restrictive DOC supervision regimen. Representatives of this branch of the DOC, the Community Corrections Operations, personally interface with Mr. Dudgeon at their office and at his personal residence on a regular basis. They monitor his activities, know his family and personal circumstances and have rated him as LOW, which is DOC terminology for "minimal risk to offend" (ATCH 4). It should be noted that personnel in this branch of the DOC who know and work with Mr. Dudgeon on a regular face-to-face basis rate him as minimal risk to offend, while the one person in that same agency, the DOC, who chairs the ESRC and who doesn't know and has never met Mr. Dudgeon rates him at the highest risk to offend. The unreasonable and unjust dichotomy is obvious. It is this rating the Kitsap County Sheriff's Office has adopted *in toto* and which is the crux of the issue now before the Court.

Under III. STATEMENT OF THE CASE, pages 3-5 of the BRIEF:

1) Ms. Boe stated that "In 1984 Mr. Dudgeon pled guilty to three counts of Unlawful Sexual Intercourse with a 15 year old and a 14 year old girl.". That statement is not true. Mr.

Dudgeon pled guilty to three counts of consensual but unlawful sexual intercourse with one teenaged female, not two (ATCH 5). This was over thirty years ago and the charges have long since been reduced to misdemeanors, dismissed and purged from the official record (ATCH's 6 & 7).

2) Ms. Boe stated that "He served a three year sentence in California for this conviction.", referring to the above. This statement is not true. Mr. Dudgeon was sentenced to one year in the county jail, served eight months and was released and placed on five years probation which was terminated after two and a half years for good cause (ATCH's 5 & 6).

3) The allegations by Ms. Boe of "...several other instances of child molestation and rape..." occurring "Between 1984 and 2000..." with "...two other victims." is also false information. The girl whom Ms. Boe alleges to have been molested by Mr. Dudgeon from age 5 through 9 (CP 29) refers to impossible allegations made by KM#2, the younger sister of KM#1, the teen aged girl with whom Mr. Dudgeon had pled guilty to having consensual unlawful sexual intercourse in 1983. When KM#2 was 5 years old in 1977, Mr. Dudgeon was living in Biloxi, MS. and didn't move across the street from and become acquainted with the "M" family who lived in Sacramento, CA until late 1980. This was reported in Ms. Boe's source document which she neglected to mention. The gist of KM#2's claims made in various contrived and contradictory statements was that the molestations took place while she stayed in Mr. Dudgeon's home during the time KM#1 spent part of the summer of 1983 staying with Mr. Dudgeon. Both KM#1 and her friend, who frequently visited KM#1 at Mr. Dudgeon's home during that period in 1983, made sworn depositions affirming that KM#2 never spent any time at Mr. Dudgeon's home during the short time she remained in Sacramento after accompanying KM#1 there from

their home in Alaska for KM#1's visit in the summer of 1983. At no time did Mr. Dudgeon have any interface of any kind with KM#2 other than when she was in the immediate company of her parent(s) on short visits "across the street" to Mr. Dudgeon's home.

4) Ms. Boe's statements concerning an individual who "...claimed to be molested and raped between the ages of nine through sixteen (CP 29)," are absolutely false and are so outrageously bizarre concerning the number of alleged incidents and the circumstances under which they are supposed to have taken place, as to be all but impossible on their face. The individual alleged over 200 incidents during the time she stayed over night at the Dudgeon household during the period of time his children were living at home and the two families lived in the same area, which was not for the entire period of time between the individual's 9th and 16th years of age. The individual claimed she was molested while sleeping in the same room with two of Mr. Dudgeon's daughters and in the same bed with one of them! All during the alleged assaults she claimed she struggled and shouted for Mr. Dudgeon to stop. With 5 other family members sleeping in close proximity and two of them in the same room, even the same bed, it can be seen how utterly impossible is this scenario. These bizarre accusations never proceeded beyond the stage of unsupported wild allegations and never resulted in any charges being filed. The genesis appears to have been perceived slights of the individual and her family by Mr. Dudgeon which prompted long term resentment culminating in her baseless bizarre allegations.

B. ISSUES TO BE DECIDED

1) Is the Trial Court empowered to hear Mr. Dudgeon's Petition For Writ Of Certiorari and, if the Court then finds the risk level classification of Mr. Dudgeon as assigned by Kitsap County Sheriff's Office to be unjustified, can the Court then order that

classification to be rescinded and render the finding that should have been rendered by the lower tribunal?

2) Is the risk level designation assigned to Mr. Dudgeon by the Kitsap County Sheriff's Office an appropriate designation based on relevant, substantial current evidence?

C. ARGUMENT

1) Mr. Dudgeon's Case Should Be Remanded Back To The Trial Court With Instructions To Hear The Case And If The Trial Court Determines That Mr. Dudgeon's Risk Level Assignment By The Kitsap County Sheriff's Office Was An Arbitrary And Capricious Decision Not Based On Substantial Current Evidence, The Trial Court Shall Weigh The Merits Of The Case And If The Proffered Substantial Evidence So Justifies, Mr. Dudgeon Shall Be Ordered Classified As A Risk Level I.

Respondent argued that the Trial Court should dismiss Mr. Dudgeon's Petition because Mr. Dudgeon asked the Court to vacate as erroneous the classification of Mr. Dudgeon as a level III risk assignment by the Kitsap County Sheriff's Office and to order the assigning of a level I as supported by the substantial evidence proffered in his case, the finding that the lower official should have rendered in the first place. The Court stated that the Court was limited to only being able to "...send Mr. Dudgeon and his case back to the Sheriff's Office for another evaluation" (VRP 13) and to do even that the Petition would have to be renoted and seek only review as to whether the classification was arbitrary and capricious (VRP 15).

On repeated occasions Mr. Dudgeon proffered to the Sheriff's representative, Detective Dillard, substantial evidence supporting Mr. Dudgeon's claim that he should be classified no higher than a level I risk potential (CP 4, 9, 12, 23-55, 60-64, ATCH 11), and on each occasion

Detective Dillard stated the ESRC had already classified Mr. Dudgeon as a level III and as far as he, Dillard, was concerned Mr. Dudgeon would remain a level III from then on (CP 4, 6, 7, 74, 80, 81, RP 5, 6).

Obviously, to send the Petition back to the same agency for a re-evaluation under the same conditions, i.e. the adoption of the ESRC classification and assigning that classification to Mr. Dudgeon without reviewing other evidence, which detective Dillard stated would always be the case, would result in the repeat of the same classification for Mr. Dudgeon. This lack of applying any discerning discretion in making a decision as important as this life altering decision is, to refuse to review all the available evidence, especially the overwhelmingly suasive substantial evidence Mr. Dudgeon proffered (CP 4, 9, 12, 23-55, 60-64, ATCH 11) and to consider exclusively then adopt the ESRC classification which is based on information that has been professionally discredited by a nationally recognized expert in the relevant scientific field, Dr. Richard Wollert, Ph.D., (CP 7, 8, 60-64), is clearly an arbitrary and capricious act and denies Mr. Dudgeon his right to a fair and objective evaluation for risk level assignment.

The above circumstance represents a closed procedural loop whereby on the one hand the only evaluation Mr. Dudgeon would be permitted by the classifying agency would be one adopting as determinant the single source of “evidence” represented by the ESRC “evaluation”, a professionally discredited evaluation (CP 7, 8, 60-64), which results in an irrational and unjustified classification. On the other hand, Mr. Dudgeon is denied any meaningful relief in the court to challenge the validity of that erroneous classification and be granted realistic corrective relief. This “closed loop” represents procedural processes violative of Mr. Dudgeon’s due process rights under the 5th and 14th Amendments to the United States Constitution.

There are several cases within the Ninth Circuit that confirm that exculpatory evidence must be introduced/reviewed and that failure to review appropriately all the evidence provided could result in a due process violation. “Government suppression of exculpatory evidence violates due process.”. Grisby v. Blodgett, 130 F.3d 365 (9th CIR 1997). “...failure to review mitigating evidence would violate the Eighth Amendment to the United States Constitution unless tactical reasons existed for presenting no mitigating evidence.”. State v. Sagestequi, 135 Wash.2d 67, 954 P.2d 1311 (1998). Mr. Dudgeon proffered an abundance of current substantial evidence strongly supporting his assignment as a risk level I and that evidence was never reviewed. Suppression of or refusal to review proffered substantial evidence is not justice. State prosecutors must “serve truth and justice first”, and stay within the rules. U.S. v. Lopez-Avila, 678 F.3d 955, 964 (9th CIR 2012).

Ms. Boe claims the substantial evidence Mr. Dudgeon submitted to the Court was “new” evidence, outside the record, and could not be considered. This evidence was all part of Mr. Dudgeon’s official record of proceedings in association with his commitment and behavior, and was proffered to Detective Dillard before he announced his arbitrary decision to consider exclusively the ESRC’s input and to adopt its level III classification of Mr. Dudgeon. Even if it were to be considered “outside the record”, it is still admissible in this case which involves allegations of procedural irregularities and raises the issue of fairness as well as constitutional questions. “When the petition involves allegations of procedural irregularities, or appearance of unfairness, or raises constitutional questions, the court may consider evidence outside the record. Federal Way v. King Cy., 62 Wash.App. 530, 534 n.2, 815 P.2d 790 (1991).”. Responsible Urban Growth Group v. The City of Kent, 123 Wash.2d 376, 868 P.2d 861, 866 (1994).

The question becomes one of whether the Reviewing Court is empowered to hear the case, review all the evidence, including that overwhelmingly supportive of Mr. Dudgeon being assigned a risk level I, and then render the finding that should have been rendered by the Sheriff's representative, who, instead of reviewing all the evidence, considered exclusively and adopted the classification made by the ESRC which was based on stale information of questionable veracity which had been professionally discredited (CP 7, 8, 60-64).

Even that initial decision by the ESRC made at the time Mr. Dudgeon was going to be released from the SCC classified him as a level I but was changed at the last minute to level III by the chair person of that committee giving as the stated reason that it was because of his being "...unamenable to treatment and not admitting responsibility" (RP 5). One wonders – where Mr. Dudgeon readily admitted responsibility for and pled guilty to acts he committed some thirty years ago and then, because he challenges allegations of acts he did not commit and has provided in current and past court appearances convincing supporting argument and documentation – how that equates to being "unamenable to treatment and not admitting responsibility".

In any event the issue of "treatment" is moot. The State's own expert, Dr. Amy Phenix concluded in her evaluation of Mr. Dudgeon in 2012 that Mr. Dudgeon did not meet commitment criteria, i.e. he did not have the requisite RCW 71.09 "mental abnormality", i.e. a paraphilia of any kind needing treatment, and he was not dangerous, with a 1-4% risk to offend (ATCH 11). This conclusion is in consonance with the conclusions reached in the five other in depth psychological evaluations of Mr. Dudgeon, conducted in the very recent to near past (CP 23-55, 60-64), all of which were proffered to Detective Dillard prior to his finalizing Mr. Dudgeon's classification as a level III risk.

RCW 7.16.040 states that a Superior Court is authorized to "...correct any erroneous or void proceeding...". As Mr. Dudgeon presented in his pleadings (Appellant's Brief at 21), "to correct" according to Webster's means "to set right", "...to amend". This plain language interpretation has been a principle of Washington State jurisprudence going back over 100 years as Mr. Dudgeon has pointed out (Appellant's Brief at 20-23), well before the concept was codified in RCW 7.16.040. It is a concept the legislature apparently felt was self evident in the wording of the statute. If the legislature had intended the interpretations as have been applied in this case, it would have included language restricting the interpretation of "to correct" to mean that the court of review in considering a petition for writ of certiorari could, if it found the lower tribunal's decision to be arbitrary and capricious, send the petition back to the lower tribunal for a "do over" as the court's only option. Because that restrictive language is noticeably missing, the Reviewing Court is empowered to hear a petition for writ of certiorari and, if in the Court's judgment the circumstances call for it, to review the evidence and render the decision that should have been rendered in the first place. This judicial process based on the written record has been employed historically in the past as cited supra and is done regularly in courts considering Less Restrictive Alternative, LRA, actions, and all have been accomplished without the testimonies, experts, investigators, juries, etc – the legal Armageddon – envisioned as inevitable by Deputy Prosecutor Boe.

The Enright Court stated in two different places that "... a sex offender assigned a risk level classification under RCW 4.24.550 and RCW 72.09.345 may petition the superior court to change the classification." Id at 707, and "After release to the community, the offender may petition the superior court to change his classification...", Id at 713. In re Det. Of Enright, 131

WA. App. 706 (2006). Clearly, the concept of court ordered corrective action of the nature Mr. Dudgeon seeks in his petition is not a novel concept in Washington State jurisprudence.

Classifying agencies are granted wide latitude under RCW 72.09.345 and RCW 4.24.550 in assigning risk levels to individuals convicted of a sex offense who are about to be released to the community. There are no substantive statutory guidelines for the classifying agency to follow, State v. Ramos, 149 Wn.App. 266, 202 P.3d 383, 387 (Wn. App. Div. II 2009), consequently the possibility of abuse of that classifying authority is very real, as demonstrated in the instant case. Safeguards must be in place and must afford realistic protection against abuse of that discretionary power. State v. Brosius, 154 Wn. App. 714, 225 P.3d 1049 (Wn. App. Div. II 2010).

RCW 72.09.345 states that “The committee shall classify as Risk Level I those sex offenders whose risk assessments indicate a low risk of reoffense within the community at large.”. The ESRC initially did just that with regard to Mr. Dudgeon (RP 5) and classified him at the appropriate level I when he was about to be released from the SCC. Then at the last minute changed it to level III based on an issue that had already been rendered moot, as discussed earlier herein.

This arbitrary action and that of the Sheriff’s representative in refusing to review all the evidence made available to him are demonstrations of exactly the kind of abuse cautioned against in Brosius and which the Reviewing Court, acting in that “safeguard” capacity, is empowered to remedy.

Prior to being assigned the unjustified risk level III, Mr. Dudgeon was given no advance warning or hearing and thus no chance to challenge the intended unjust level III classification.

Fuentes v. Shevin, 407 U.S. 67, 81, 97 S.Ct. 1983-84 (1972); Lone Star Sec. & Video, Inc. v. City of Los Angeles, 584 F.3d 1232-35 (9th CIR 2009). Had the evaluation concerning Mr. Dudgeon's risk level assignment been based on all the available evidence and a realistic objectively reached risk level assignment occurred as a consequence, perhaps constitutional muster would have been met. However, due to the deliberate machinations by the State officials in this particular case, due process under the 5th and 14th Amendments was violated. "Internal agency regulations cannot legitimate the violations of constitutional or statutory rights." U.S. v. Maroff, 173 F.3d 1213 (9th CIR 1999). The February 2014 upgrade of the Administrative Law and Practice, ADMLP § 2:23 Constitutionally adequate procedural design [5] is instructive and very apropos to consideration in this case. "... in Vitek v. Jones, ... the court said: 'minimum [procedural] requirements [are] a matter of federal law, they are not diminished by the fact a State may have specified its own procedures that it may deem adequate for determining the preconditions to adverse official action.' Similarly, in Logan v. Zimmerman Brush Co., the Court refused to allow the legislature to define the procedures by which a constitutional entitlement should be protected."

The infringement on Mr. Dudgeon's due process rights arise not from the invidious or irrational enforcement of an invalid ordinance, but from the manner of enforcement of a valid ordinance. Hayes v. City of Seattle, 131 Wash.2d 706, 934 P.2d 1179 (1997), referring to action taken in Lutheran Day Care v. Snohomish County, 119 Wash.2d 91, 879 P.2d 746 (1992). Had the classifying officials considered all the evidence available, reached the risk level assignment that a fair and equitable review of that current substantial evidence called for – as the ESRC did initially in its classification of Mr. Dudgeon as a level I just prior to his scheduled release from

the SCC (RP 5) – this would have comported with the language and intent of the statutes and all would have been as it should have been. However, this clearly was not the case and the resultant blatant injustice being inflicted on Mr. Dudgeon prompts this instant matter.

2) The Assignment Of A Risk Level III To Mr. Dudgeon By The Kitsap County Sheriff's Office Was An Erroneous Decision Made Without Considering Any Of The Substantial Current Evidence Proffered By Mr. Dudgeon And Should Be Ordered Rescinded By The Trial Court And Substituted With The Assignment Of The Appropriate Risk Level I, As Supported By That Evidence.

The Sheriff's representative, Detective Dillard, refused to consider, or even view, any of the substantial evidence that Mr. Dudgeon proffered supporting his claim that he should be assigned a risk level no higher than level I. In addition, Mr. Dudgeon has never been provided any information upon which his assignment of risk level III was based, other than Detective Dillard's statement that the ESRC had already classified Mr. Dudgeon as a level III and as far as the Sheriff's Office was concerned that's what Mr. Dudgeon would remain hence forth. (CP 4, 6, 7, 74, 80, 81, RP 5, 6).

This precipitous action on the part of Detective Dillard was certainly not indicative that he had employed any "specialized expertise" (Respondent's Opening Brief, foot note at 29) when he arbitrarily classified Mr. Dudgeon at a level III risk potential without evaluating all the evidence including the substantial evidence proffered by Mr. Dudgeon as discussed earlier in this pleading. Instead, Detective Dillard based his decision solely on and adopted the classification made by the ESRC which in turn was based on information that was over 8 years old at the time and which was professionally discredited by a nationally recognized psychologist considered by

his peers to be an expert in the relevant scientific field, who completed a forensic psychological examination of that outdated information to reach his conclusions, as discussed in Appellant's Brief at 4, 5 and CP at 60-64. Whatever specific "competent proof" and "substantial evidence" (Respondent's Opening Brief at 31, 32) that was employed by Detective Dillard as the justification for rating Mr. Dudgeon at a higher than level I risk potential was never disclosed to this litigant, nor provided to the Court for review.

This "star chamber" collusion between the ESRC and the Kitsap County Sheriff's representative, or at the very least this unquestioned acceptance of whatever irrational and unsupported basis the ESRC used to make its classification and which the Sheriff's representative adopted *in toto*, evidenced no indication of any discerning discretion employed, no fair and impartial evaluation of proffered substantial evidence, no rationale, no indication of what could be done to warrant the assignment of an appropriate level I... only the arbitrary and precipitous "you're a level III and will remain so from now on" put forth by the Sheriff's representative.

As discussed earlier, Mr. Dudgeon is not claiming that the classification statutes themselves, RCW 72.09.345 and RCW 4.24.550, are unconstitutional, but that in this particular case the manner in which they have been enforced concerning Mr. Dudgeon deny him due process. The stated intention by the Sheriff's representative was that the level III assigned to Mr. Dudgeon based solely on the ESRC's classification would never be changed no matter what substantial evidence Mr. Dudgeon should proffer. The Reviewing Court's conclusion was that the case must be dismissed without being heard unless it is renoted and asks only for review and if the classification is found to be "arbitrary and capricious", it would then be sent back to the

Sheriff's representative for a re-evaluation, where, as stated, it was the manifest intent of that office to never assign other than a level III risk potential to Mr. Dudgeon. This procedural "closed loop", discussed earlier, effectively forecloses any chance of Mr. Dudgeon receiving a fair and impartial risk level assignment based on a review of all the evidence and any possibility of meaningful effective relief through petitioning the Court.

In petitioning the Court Mr. Dudgeon was not asking that the Court substitute its judgment for that of the lower office, but rather to correct a situation where judgment had already been exercised – such as it was – by that lower office, and it had been an arbitrary and capricious judgment resulting in an erroneous classification decision concerning Mr. Dudgeon. That erroneous classification by the lower office, the Sheriff's representative, and the stated intent that the classification would never be changed created a procedural violation of Mr. Dudgeon's due process rights.

The denial of assigning the overwhelmingly justified risk level I to Mr. Dudgeon denies him the opportunity to pursue a normal home life with his wife and visiting family members and to reintegrate and be accepted into the community in which his home is located. Instead, to be assigned the totally unjustified level III with the attendant obloquy, harassment – perhaps physical up to and including murder as shown in Mr. Dudgeon's previous pleadings in this matter – moves well outside the intended regulatory purpose of the statutes (RCW 4.24.550, RCW 72.09.345) and into the realm of punishment. "...a legislature may have a genuine regulatory purpose in mind but if the sanction imposed amounts to punishment it must be treated as such. As the Third Circuit has said: [A]t some level the sting will be so sharp that it can only be considered punishment regardless of the legislators' subjective thoughts." Doe v. Gregoire,

960 F.Supp. 1478, 1483 (W.D. Wash 1997). "...however, it is more likely to be punitive if it 'appears excessive in relation to the alternative purpose assigned.' Kennedy v. Martinez-Mendoza, 83 S.Ct. 554, 372 U.S. 144, 169 (U.S. 1963).". U.S. v. Juvenile Male, 590 F.3d 924, 938 (9th CIR 2009).

Had the ESRC (or the "ESCR", or the "ESGR", as Ms. Boe randomly makes reference to), and/or the Kitsap County Sheriff's Office classified Mr. Dudgeon as the plain language and intent of RCW 72.09.345 calls for where it states: "The committee shall classify as risk level I those sex offenders whose risk assessment indicate a low risk of reoffense within the community at large.", none of the problems presented by this case would have arisen. Even a cursory reading of the overwhelmingly suasive substantial evidence supporting Mr. Dudgeon's contention that he should be rated as a level I risk would lead the objective fair minded reader to conclude Mr. Dudgeon clearly should be classified no higher than that level I risk potential.

The language of the statute itself employs the use of the word "shall", which has been determined by the Washington Supreme Court to be considered mandatory language as cited in Mr. Dudgeon's Petition at 7 (Rios v. Department of Labor and Industries). Had the legislature intended that those individuals whose risk assessment (implying procedurally sufficient assessments of all the available evidence!) indicated a low risk of reoffense within the community at large, "may" be classified as level I, or even the more positive "should" be classified as level I, it would have used that language instead of the definite "shall" be classified as level I. The wide latitude granted the classifying agencies in their discretionary duties of assigning risk level classifications to individuals cannot be so stretched and abused as to pervert

the plain language intent embodied in the statute requiring that individuals considered to be low risk to offend be classified as level I.

It is this injustice, this abuse of their discretionary power by the agencies responsible for that classification, that Mr. Dudgeon petitioned the court to correct as a function of the “safeguard” responsibility cited in Brosuis. The unsupported and blatantly unjust classification of Mr. Dudgeon as a risk level III subjects Mr. Dudgeon to the attendant public condemnation, obloquy and harassment that can be and has been elevated to unprovoked murder of individuals classified above a level I risk assignment who had to register as such in Washington State.

These murders are fact not the “conjecture”, that Ms. Boe stated in her Brief. She went on to state there was nothing in the record to support Mr. Dudgeon’s claim of the recent murder of two individuals living in the immediate locale of Mr. Dudgeon’s home in the Sequim, WA area. These murders were the most recent of several of that category that have taken place in Washington State in the past, and they were widely reported in the public media, (ATCH’s 8 & 9) and were addressed in Mr. Dudgeon’s Petition (CP 5, 6) and in Appellant’s Brief at 8, 25-27. A sworn affidavit by Mrs. Dudgeon (ATCH 10) independently confirms the immediate risk to property and even life if Mr. Dudgeon were to return to his home in Sequim as a level III.

Ms. Boe attempts to minimize this abhorrent circumstance by stating nothing in the record supports it and that Mr. Dudgeon can’t show how “criminal conduct would constitute government action.” (Respondent’s Opening Brief at 19). Mr. Dudgeon has shown the terrible consequences that all too frequently, in Washington State, accompany the requirement to register as a risk level II or III. Mr. Dudgeon in no way and at no time implied that “criminal conduct would constitute government action”, that is Ms. Boe’s creation.

As Mr. Dudgeon has shown, in many instances in Washington State, the labeling of someone as a risk level II or III with its attendant broadcast of inflammatory – in many cases untrue, or greatly exaggerated – information to the public precipitates a concurrent criminal action of destruction of property or even murder. This very realistic possibility certainly puts at risk Mr. Dudgeon’s right to the protection of his property and life under the 5th and 14th Amendments as a result of the rabidly inflammatory language broadcast concurrently with being labeled – wrongfully in this case – as a higher than the deserved level I risk potential. It is most certainly blatantly unjustified considering that Mr. Dudgeon has been evaluated in six different psychological examinations conducted by Ph.D. psychologists nationally recognized in their relevant scientific field as being eminently qualified, including the state’s own expert, and all rated Mr. Dudgeon at a low to very low, or negligible, risk to offend (CP 4, 9, 12, 23-25, 60-64, ATCH 11). Where is the specific substantial current evidence to support a likelihood to reoffend – a “future dangerousness” – rating of level III? This gross mislabeling of Mr. Dudgeon runs contra to established case law on the subject. “The Washington Supreme Court has held that ‘a public agency must have some evidence of an offender’s future dangerousness, likelihood of reoffense, or threat to the community, to justify disclosure to the public in a given case’.”. Russell v. Gregoire, 124 F.3d 1079, 1082 (9th CIR 1997).

One of the above mentioned eminently qualified psychologists stated in his evaluation of Mr. Dudgeon that to consider the evidence present and Mr. Dudgeon’s age – now 81 years old – and to then rate him as anything but a very low risk to offend would be “nothing short of ludicrous” (ATCH 2).

D. CONCLUSION

For a reviewing court in RCW 7.16.040 action "... to correct any erroneous or void proceeding..." implies taking exactly the kind of action called for in the plain language interpretation of the phrase "to correct", i.e., , "... to make or set right", "... to amend". The court is well within the bounds of that definition and statutory interpretation, as well as historical jurisprudence in Washington State when, given that the unusual justifying circumstances exist that call for it, the court exercises that prerogative which is not only not prohibited by the plain language of RCW 7.16.040, but under certain circumstances may be the best – if not the only – avenue for justice to prevail.

Such is the case here. The refusal by the classifying agencies to review all the pertinent evidence, most particularly the overwhelming suasive substantial evidence proffered by Mr. Dudgeon, in assigning a risk level classification to Mr. Dudgeon; the stated intention by the final classifying authority that his office would never classify Mr. Dudgeon as other than a level III risk no matter what future evidence may be proffered and the refusal by the Reviewing Court to hear the case and to conclude that any future submission by Mr. Dudgeon in this matter would have to ask only for a review to determine whether the decision by that final classifying authority was arbitrary and capricious and if it was so determined by the court it would be sent back to the same classifying agency for a re-evaluation under the same expressed stance taken previously, all combine to create a violative manner of enforcement of the classifying statutes as concern Mr. Dudgeon in this particular circumstance.

This violative stance taken by the classifying agency and the denial by the Reviewing Court of the only avenue Mr. Dudgeon had to correct the erroneous decision resulting from that

violative behavior denies Mr. Dudgeon his right to due process and leaves him vulnerable to the very real ongoing risk of invasion of his right to protection of his property and life due directly to that blatantly unreasonable and totally unjustified risk level III assigned to him by the classifying agencies.

Mr. Dudgeon respectfully asks the Court to find that, in consideration of the argument presented herein, supporting documentation and the suasive substantial evidence proffered by Mr. Dudgeon, the Superior Court be instructed to hear Mr. Dudgeon's case, review that evidence and if in the judgment of that Court the claimed level I assignment to Mr. Dudgeon is justified the Court render that decision to ORDER that Mr. Dudgeon be so classified.

Sworn to and respectfully submitted this 2ND day of JUNE, 2014.



Cecil Dudgeon
4381 State Hiway 3W Apt. #10
Bremerton, WA 98312
(360) 912-4382

ATTACHMENT 1

Dudgeon Marriage Certificate

STATE OF WASHINGTON

County of Jefferson } ss.

No. 11085

MARRIAGE CERTIFICATE

THIS IS TO CERTIFY, that the undersigned, a MATHEW

by authority of a License bearing date the 8th day of Jan A. D. 19 98

and issued by the County Auditor of the County of Jefferson did, on the 8th day of

Jan A. D. 19 98, at the hour of 11:00 AM in the County and State aforesaid, join IN LAWFUL WEDLOCK

CECIL EMMET DUDGEON of JEFFERSON COUNTY State of WASHINGTON

Place of birth LIBERTY, MO Age last birthday 64

and MARIE CLAUDE SPIVEY of JEFFERSON COUNTY State of WASHINGTON

Place of birth FRANCE Age last birthday 51

with their mutual assent, in the presence of JAVINE CARILLA

and JACQUELINE CHURCHILL Witnesses.

IN TESTIMONY WHEREOF, Witness the signatures of the parties to said ceremony, the witnesses and myself, this

day of JANUARY A. D. 19 98

WITNESS

Javine M. Carilla

Cecil Dudgeon MALE

OFFICIATING CLERK AND/OR OFFICER
Donna M. Gastfield

Jacqueline Churchill FEMALE

Marie Claude Spivey

ADDRESS PO Box 454 Woodlark WA.
WASHINGTON

Filed January 8, 19 98

DONNA M. GASTFIELD

COUNTY AUDITOR

BY Donna M. Gastfield

DEPUTY

This Certificate must be filled out and filed with the County Auditor of JEFFERSON COUNTY, PORT TOWNSEND, WASHINGTON, within 30 days after the ceremony (See Chapter 59, Section 2387, Laws of 1947.)

Failure to make and deliver Certificate to the County Auditor within 30 days is punishable by a fine of not less than \$25.00 or more than \$300.-(Chap. 59-Sec. 2387-Laws of 1947)

ATTACHMENT 2

Psychological Evaluation of Mr. Dudgeon by
Dr. Theodore Donaldson, Ph.D., August 15, 2011

Theodore S. Donaldson, Ph.D.
Clinical Psychologist
California License #: Psy 2744

90914 Southview Lane
Florence, OR 97439
Phone: (541)997-1800
Fax: (541)997-4447

August 15, 2011

Robert L. Naon
Ness and Associates
420 Cline Avenue
Port Orchard, WA 09366

ANNUAL REVIEW PURSUANT TO RCW 71.09.070 UPDATE

RE: DUDGEON, Cecil
Date of Birth: 06/03/33
Jurisdiction: Kitsap County
Cause #: 05-2-01588-0
Date of Update: 07/15/11

Mr. Dudgeon was evaluated relative to RCW 71.09.070 at the request of his attorney, and the results were presented in a report dated 07/21/10. Recently, his attorney sent me a Special Commitment Center (SCC) Annual Review, dated 06/06/11, by Carla Van Damm, Ph.D., and requested an updated Annual Review and comments on the review by Dr. Van Damm. For this updated report, I reviewed my previous evaluation and the Annual Review by Dr. Van Damm.

On page 2 of her report, Dr. Van Damm notes that she is basing her diagnosis and the evidence for a "mental abnormality" "verbatim from early reports," since Mr. Dudgeon did not meet with her or several previous evaluators. Dr. Van Damm seems to be saying that the only way that she could determine whether or not he has a "mental abnormality" would be through an interview. However, Dr. Van Damm has not indicated what kind of information she could gain in an interview that would reflect on whether or not Mr. Dudgeon continues to suffer from a diagnosis that predisposes him to sexual violence and that he currently has serious difficulty controlling. In spite of that, on page 3, Dr. Van Damm states: "He has clearly displayed the criteria necessary to meet this disorder" (referring to Pedophilia). Dr.

Van Dam also notes a provisional diagnosis of Paraphilia, NOS, with hebephilic tendencies.

Dr. Van Damm did not report on the current data that she found that addressed the criteria, nor, in fact, what criteria were addressed. It is not surprising that Dr. Van Damm did not venture out and indicate the specific criteria for Pedophilia. Those in the *DSM* are particularly vague and have been criticized numerous times for the lack of specificity. The diagnosis of Pedophilia has always been particularly problematic, and there is not a single empirical study that indicates that the *DSM* diagnosis separates child molesters from pedophiles. Most significantly, a study by Kingston, et al., (2007) reported that a *DSM* diagnosis of Pedophilia rendered by psychiatrists did not separate pedophiles from those who were only considered child molesters. Not only was there a lack of clinical evidence separating the two, but the recidivism rates were nearly identical (with the pedophiles having a slightly higher, but not statistically significant, recidivism risk).

Diagnosing Pedophilia since the advent of SVP laws has in practice become overly simplified and is, for the most part, based on criminal behavior. Much of the problem with the diagnosis of Pedophilia, or any of the paraphilias, is that they have never been field tested nor have they ever been subjected to careful scrutiny and research. Very recently Frances and First (2011) explained the changes in, and the development of, the current criteria in the *DSM-IV-TR*. These are probably the two most noted authorities on diagnosis and the *DSM*. Allen Frances, M.D., was the chairperson of the *DSM-IV* and Michael First, M.D., was the text and criterion editor, and they have published extensively on diagnosis. The authors point out that the term "Paraphilia" was first introduced in the *DSM-III*, and noted that: "The essential feature of disorders in this subclass is that unusual or bizarre imagery or acts are necessary for sexual excitement." They then go on to note that, in the subsequent *DSM-III-R*: "Because of concerns about the subjectivity and unreliability of the terms 'unusual' and 'bizarre' in the definitions, these terms were omitted in the *DSM-III-R*." The authors note the opening sentence in the *DSM-IV-TR* in the "paraphilic" section, which is generally used as the diagnostic criteria for Paraphilia, specifically Pedophilia, and they conclude: "This wording is clearly inadequate as a definition, but the sentence was not rewritten during the *DSM-IV* revision process, because never in our wildest dreams did we foresee that it would be misconstrued in legal proceedings to be an operational definition of what types of sexual arousal foci fall within the diagnostic construct of a Paraphilia."

The authors conclude that the original statements in the *DSM-II-R* "with its explicit statement that the essence of a paraphilia is that 'unusual or bizarre imagery or acts are necessary for sexual excitement.'" This criterion for Pedophilia would separate those who opportunistically molest children from those who find such behaviors necessary for sexual excitement, but is no longer a *DSM* requirement for the diagnosis.

It is evident at this time that most psychologists who do SVP evaluations do not understand the diagnostic requirements for Pedophilia, nor do they understand the inadequacies of the *DSM-IV-TR* criteria.

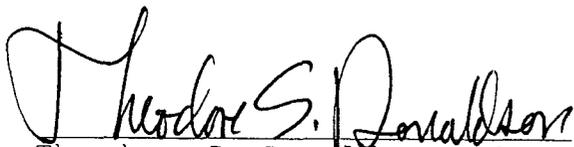
Allen Frances, M.D., recently (07/08/11) reports that he has testified for the defense in fourteen SVP cases in California, Washington, and Iowa, and that, in the process, he read close to one hundred reports prepared by state evaluators (all psychologists). While he notes that this is a small sample, he does note that his results were very consistent: "In not one case, did the sexual offender qualify for anything remotely resembling a *DSM-IV* diagnosis of Pedophilia."

Although Dr. Van Damm in her recent Annual Review has not produced the slightest evidence that Mr. Dudgeon continues to suffer from Pedophilia or Hebephilia, she is certainly not alone in her method of approaching diagnosis of a paraphilia, which is essentially based on a history of criminal behavior. As I noted in my previous Annual Review, Mr. Dudgeon has not shown signs and symptoms of Pedophilia in twenty-three years. In the absence of signs and symptoms, one must conclude that the diagnosis is either in remission or never existed in the first place. Certainly, one cannot conclude, after such a long period of absence of symptoms, that he currently has the diagnosis and currently has serious difficulty controlling acting on it. Evaluators often like to claim that, since there are no children at the SCC, he cannot, therefore, show signs and symptoms. That is erroneous, since signs and symptoms do not necessarily have to involve a sexual act against a child, and, in any event, if one cannot show the signs and symptoms in their current environment, then how could one ever conclude that they have the diagnosis? These are the kinds of mental gyrations employed by many SVP evaluators to shoehorn sex offenders into civil commitment requirements.

Dr. Van Damm's address of future dangerousness is at least as inadequate as her address of the diagnostic issues. On page 4, Dr. Van Damm notes that, in scoring Mr. Dudgeon on the revised Static 99R, he would have a score of 1, indicating very low risk. She points out that this is due to his advancing age and "suggesting that merely due to his having aged, his risk to

continue to offend has decreased significantly." Apparently, she prefers her own prejudice to the empirical evidence of age affect on recidivism. In the following paragraph, she points out that he has steadily refused to participate in therapy and "thus, he has done nothing vis-a-vis treatment to mitigate risk against ongoing potential sexual proclivities. The best predictor of future behavior is past behavior." She argues that this makes him highly unlikely to make any future changes in his behavior. This is such an outrageous conclusion and so directly contrary to all the evidence that we have about recidivism risk and aging that it represents not only professional incompetence, but an extremely biased and prejudicial approach to risk assessments.

In summary, there is totally inadequate support for a diagnosis of Pedophilia or for the "mental abnormality" in Mr. Dudgeon's case. There is insufficient evidence to conclude that he currently suffers from a "mental abnormality" and, in fact, the evidence that he ever had such a condition is very shaky. To conclude that Mr. Dudgeon represents any substantial risk of future sex-offense recidivism, given his current age of seventy-eight, is nothing short of ludicrous.



Theodore S. Donaldson, Ph.D.

tcsk

References

Frances, Allen. "Going for Wins in Sexually Violent Predator Cases." *Psychiatric Times*. 07/07/11. On-line.

Frances, Allen and Michael E. First. "Hebephilia is not a Mental Disorder in *DSM-IV-TR* and Should not Become One in *DSM-5*." *The Journal of the American Academy of Psychiatry and the Law*. 39 (2011): 28-85.

Kingston, Drew A., Philip Firestone, Heather M. Moulden, and John M. Bradford. "The Utility of the Diagnosis of Pedophilia: A Comparison of Various Pedophilic Classification Procedures." *Archives of Sexual Behavior*. 36 (2007): 423-236.

ATTACHMENT 3

Excerpts, Judgment and Sentencing, July 24, 2001

CERTIFIED COPY

917
JC

1997 02 04 11:23
NO. 00 1-43-5
BY _____

\$28432

SUPERIOR COURT OF WASHINGTON
COUNTY OF _____

STATE OF WASHINGTON, Plaintiff,

v.
Cecil Emmet Dudgeon
Defendant.

No. 00 1-43-5

JUDGMENT AND SENTENCE (JS)

- Prison
- Jail One Year or Less
- First-Time Offender
- Special Sexual Offender Sentencing Alternative
- Special Drug Offender Sentencing Alternative

SID:

If no SID, use DOB: 06-05-33

I. HEARING

1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the Court FINDS:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 7-24-01
by plea jury-verdict bench trial of: _____ (Date)

COUNT	CRIME	RCW	DATE OF CRIME
2	Indecent Liberties WITH Forceable Compulsion	9A.44.100(1)(a)	01-01-01 Dec 30, 1997

as charged in the (_____ Amended) Information.

- A special verdict/finding for use of firearm was returned on Count(s) _____, RCW 9.94A.125, 310.
- A special verdict/finding for use of deadly weapon other than a firearm was returned on Count(s) _____, RCW 9.94A.125, 310.
- A special verdict/finding of sexual motivation was returned on Count(s) _____, RCW 9.94A.127.

JUDGMENT AND SENTENCE (JS) (Felony)
(RCW 9.94A.110, .120)(WPP CR 6-1.0400 (4/2001))

- A special verdict finding for Violation of the Uniform Controlled Substances Act was returned on Count(s) _____, RCW 69.50.401 and RCW 69.50.435, taking place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of a civic center designated as a drug-free zone by a local government authority; or in a public housing project designated by a local governing authority as a drug-free zone.
- A special verdict finding that the defendant committed a crime involving the manufacture of methamphetamine when a juvenile was present in or upon the premises of manufacture was returned on Count(s) _____ RCW 9.94A, RCW 69.50.401(a), RCW 69.50.440.
- The defendant was convicted of vehicular homicide which was proximately caused by a person driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a vehicle in a reckless manner and is therefore a violent offense, RCW 9.94A.030.
- This case involves kidnapping in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent, RCW 9A.44.130.
- The court finds that the offender has a chemical dependency that has contributed to the offense(s), RCW 9.94A.
- The crime charged in Count(s) _____ involve(s) domestic violence.
- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.400):
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY (RCW 9.94A.360):

CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J Adult, Juv.	TYPE OF CRIME
1 WASHED					
2					
3					
4					
5					

- Additional criminal history is attached in Appendix 2.2.
- The defendant committed a current offense while on community placement (adds one point to score), RCW 9.94A.360.
- The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.360):
- The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520:

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS*	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
1	0	X	51-68	/	51-68M	10yrs

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom. See RCW 46.61.520, (JP) Juvenile present.

Additional current offense sentencing data is attached in Appendix 2.3.

2.4 EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence above within below the standard range for Count(s) _____. Findings of fact and conclusions of law are attached in Appendix 2.4. The Prosecuting Attorney did did not recommend a similar sentence.

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.142.

The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.142):

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are attached as follows: _____

III. JUDGMENT

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1 and Appendix 2.1.

3.2 The Court DISMISSES Counts 1 The defendant is found NOT GUILTY of Counts

Dismissed without prejudice - Restrained as to CT I

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court:

JASS CODE

\$ _____ Restitution to: _____

RTN/RJN

\$ _____ Restitution to: _____

JUDGMENT AND SENTENCE (JS) (Felony)
(RCW 9.94A.110, 120)(WPF CR 54.0400 (4/2001))

ATTACHMENT 4

Letter, DOC Community Corrections to
Trial Court, December 18, 2013



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

COURT-SPECIAL

REPORT TO:	The Honorable Steven Dixon Kitsap County Superior Court	DATE:	12/18/2013
OFFENDER NAME:	DUDGEON, Cecil E. Dudgeon, C	DOC NUMBER:	828432
AKA:	Dudgeon, Cecil E. Dudgeon, Cecil Emmett Dudgeon, Skip	DOB:	6/5/1933
CRIME:	Indecent Liberties (with Forcible Compulsion)	COUNTY CAUSE #:	00-1-00043- 5(AA)
SENTENCE:	Community Custody Maximum	DATE OF SENTENCE:	10/22/2001
LAST KNOWN ADDRESS:	4381 State HWY 3 Bremerton, WA 98312	TERMINATION DATE:	
MAILING ADDRESS:	4381 State HWY 3 Bremerton, WA 98312	STATUS:	Field
		CLASSIFICATION:	LOW

At Mr. Dudgeon's request, this letter is in regards to Mr. Dudgeon's adjustment while on supervision with the Department of Corrections. He has completed his mandatory State certified sex offender treatment with Dr. Whitehill. He continues to see Dr. Whitehill voluntarily every three months for on-going support. Mr. Dudgeon has paid his legal financial obligations in full. Mr. Dudgeon remains in compliance with his polygraphs. While in compliance; Mr. Dudgeon continues to receive monthly travel permits to spend time with his Wife, Claudine Dudgeon in Sequim, WA. He is permitted to stay three nights per month with her. Mr. Dudgeon is in compliance with his Court ordered conditions of supervision. He continues to report and be available for continued supervision.

I certify or declare under penalty of perjury of the laws of the state of Washington that the foregoing statements are true and correct to the best of my knowledge and belief.

Submitted By:

Date 12/18/13

Approved By:

Date 12/18/13

Pamela Flint
COMMUNITY CORRECTIONS OFFICER
Bremerton Office
5002 Kitsap Way, Lower Lvl, Ms: Wb-11
Bremerton WA 98312
Telephone (360) 415-5652

James Ison
Community Corrections Supervisor

PF / PF / 12/18/2013

The contents of this document may be eligible for public disclosure. Social Security Numbers are considered confidential information and will be redacted in the event of such a request. This form is governed by Executive Order 00-03, RCW 42.56, and RCW 40.14

Distribution: ORIGINAL - Court

COPY - Prosecuting Attorney, Defense Attorney, File

ATTACHMENT 5

Excerpts, Judgment and Sentencing & PSI report August 24, 1984

SUPREME COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE
COUNTY OF SACRAMENTO

DATE September 5, 19 84 , COURT MET AT 9 a.m. DEPARTMENT 3

PRESENT HON. PETER MERING , JUDGE G. DELUCA , DEPUTY CLERK
P. ELLEDGE , REPORTER G. COOK , BAILIFF

THE PEOPLE OF THE STATE OF CALIFORNIA #68669 VS CECIL DUDGEON	COUNSEL: (Underline if present) <u>J. ROSE, DEP. D.A.</u> <u>M. SANDS</u>
--	---

NATURE OF PROCEEDINGS: 261.5 PC (Cts 2,5,9) MAX TERM 3 YRS S.P.;
DA MOT DISM CT 1,3,4,6,7,8,10 - SUBM;
PROB HEAR - J&S

The above entitled cause came on this day with the above named Deputy District Attorney and the defendant, with counsel, being present
Upon the District Attorney's motion to dismiss counts 1,3,4,6,7,8, & 10, the Court granted said motion.

The Probation Office's (Supplemental) Report having been received, read and considered, was ordered filed; and there being no legal cause why judgment and sentence should not be pronounced;

IT IS THE ORDER OF THE COURT that the defendant be placed on Probation for a period of 5 years; imposition of judgment and sentence is suspended during said period;

IT IS FURTHER ORDERED as a condition of Probation that the defendant shall obey all orders and directives of the Probation Office; and shall obey all laws.

IT IS FURTHER ORDERED as a condition of Probation and as a disciplinary measure that the defendant be confined in the County Jail for a period of 4 months with credit for time served, to-wit: 1 day as to count 2; 4 months County Jail as to count 5; 4 months County Jail as to count 9; all to run consecutively for a total of 12 months County Jail. Sentence is stayed to 9/28/84 @ 6 p.m.

IT IS FURTHER ORDERED as a condition of Probation that the defendant shall submit his person, place of residence, vehicle to search and seizure at any time of the day or night, with or without a search warrant, or whenever requested to do so by the Probation Officer or any Law Enforcement Officer;

IT IS FURTHER ORDERED as a condition of Probation that the defendant shall participate in the Drug Abuse Program/Alcohol Abuse Program through and under the direction of the Probation Office;

IT IS FURTHER ORDERED as a condition of Probation that the defendant shall not use, handle or have in his/her possession marijuana, narcotics, dangerous drugs or controlled substances of any kind unless lawfully prescribed for by a licensed physician.

BOOK 3 Continued on page 2 MINUTES PAGE 1029

CR 4a ACTION NO. 68669 BY K. SHAW DEPUTY
PEO. VS DUDGEON 9/5/84
JOYCE RUSSELL SMITH, CLERK

000109

IV. CRIMINAL HISTORY:

Sources: DISCIS, FORS, NCIC, SCOMIS, WASIC.

Adult

Date of Offense	Charge, County, Cause #	Date of Sentence / Disposition	Date Last Released	Score (W-Wash)
7/1/83 through 7/31/83	Unlawful Intercourse - Sacramento County, CA - 68669	8/25/84		W
12/25/83 through 1/3/84	Unlawful Intercourse - Sacramento County, CA - 68669 This conviction was sentenced at the same time as the above, but served consecutively to the above	8/2/84		W
12/27/83 through 1/7/84	Unlawful Intercourse - Sacramento County, CA - 68669 This conviction was sentenced at the same time as both of the above, and served consecutively to both convictions listed above.	8/2/84		W

ATTACHMENT 6

Termination of Probation, July 7, 1987

1 MICHAEL S. SANDS, INC.
2 800 Ninth Street, Third Floor
3 Sacramento, CA 95814
4 (916) 444-9844

5 Attorney for Defendant
6 Cecil Dudgeon

FILED

JUL 07 1987

JUDITH RUSSELL SHERIDAN
Clerk
Court

7
8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

9 PEOPLE OF THE STATE OF CALIFORNIA, NO. 68669 DEPT. 1

10 Plaintiff,

11 vs.

ORDER
(Penal Code §1203.3
and 1203.4)

12 CECIL DUDGEON,

13 Defendant.

14
15 GOOD CAUSE APPEARING, IT IS HEREBY ORDERED that probation is
16 terminated as of June 30, 1987.

17 IT IS FURTHER ORDERED that the pleas of guilty are
18 withdrawn, pleas of not guilty are entered, and the information
19 is dismissed pursuant to Penal Code §1203.4.

20 THIS ORDER DOES NOT RELIEVE SUBJECT OF THE OBLIGATION TO
21 DISCLOSE THE CONVICTION IN RESPONSE TO ANY DIRECT QUESTIONS
22 CONTAINED IN ANY QUESTIONNAIRE OR APPLICATION FOR PUBLIC OFFICE
23 OR FOR LICENSURE BY STATE OR LOCAL AGENCY.

24 Dated: July 7, 1987



25 JUDGE OF THE SUPERIOR COURT

ALFRED C. [Signature] JR.
26
27
28

ATTACHMENT 7

Excerpt, Official Criminal History, Washington State Patrol
February 22, 2012

WASHINGTON STATE PATROL
IDENTIFICATION AND CRIMINAL HISTORY SECTION
P.O. BOX 42633
OLYMPIA, WASHINGTON 98504-2633

CRIMINAL HISTORY INFORMATION AS OF 02/22/2012

NOTICE

THE FOLLOWING TRANSCRIPT OF RECORD IS FURNISHED FOR OFFICIAL USE ONLY.
SECONDARY DISSEMINATION OF THIS CRIMINAL HISTORY RECORD INFORMATION IS
PROHIBITED UNLESS IN COMPLIANCE WITH THE WASHINGTON STATE CRIMINAL RECORDS
PRIVACY ACT, CHAPTER 10.97 RCW.

POSITIVE IDENTIFICATION CAN ONLY BE BASED UPON FINGERPRINT COMPARISON. BECAUSE
ADDITIONS OR DELETIONS MAY BE MADE AT ANY TIME, A NEW COPY SHOULD BE REQUESTED
FOR SUBSEQUENT USE. WHEN EXPLANATION OF A CHARGE OR DISPOSITION IS NEEDED,
COMMUNICATE DIRECTLY WITH THE AGENCY THAT SUPPLIED THE INFORMATION TO THE
WASHINGTON STATE PATROL.

MASTER INFORMATION

NAME: DUDGEON, CECIL E DOB: 06/05/1933
SID NUMBER: WA19671506
DOC NUMBER: 828432

PERSON INFORMATION

SEX	RACE	HEIGHT	WEIGHT	EYES	HAIR	PLACE OF BIRTH	CITIZENSHIP
M	W	510	180	BRO	GRY	MO	US

OTHER NAMES USED	OTHER DATES OF BIRTH USED	SOC SEC NUMBER	MISC NUMBER
DUDGEON, C			
DUDGEON, CECIL EMMETT			
DUDGEON, CECIL EMMET			
DUDGEON, SKIP			
DUNGEON, CECIL EMMET			

CONVICTION AND/OR ADVERSE FINDING SUMMARY

	DISPOSITION DATE
1 FELONY(S) INDECENT LIBERTIES	CLASS B FELONY 10/22/2001
0 GROSS MISDEMEANOR(S)	
0 MISDEMEANOR(S)	
0 CLASSIFICATION(S) UNKNOWN	

DOC SUMMARY

INDECENT LIBERTIES	COMMITMENT	10/22/2001
--------------------	------------	------------

SEARCH PARAMETERS: DUDGEON, CECIL EMMET 06/05/1933 U U
REQUESTOR: DUDGEON, CECIL REQUEST TYPE: INQUIRY RAP MODE: C
PROCESSED BY: 56 02/22/2012

ATTACHMENT 8

Media Coverage (Television) of murder of two
Registered sex offenders Sequim, WA area, June 4, 2012

LOCAL NEWS: Flash Mob To Support Canadian Tribes Hits B'ham

40°F



KEYWORDS:



ON AIR NOW SEAN HANNITY



HOME E-NEWS MOBILE NEWS WEATHER TRAFFIC SHOWS PODCASTS VIDEO PHOTOS BLOG BULLETIN BOARD ABOUT

LATEST SCHOOL CLOSINGS AND DELAYS

LOCAL NEWS

E-Mail Print A A A

Like 0

Posted: Monday, 04 June 2012 1:05PM

Two Sex Offenders Found Murdered, Sequim Man Arrested

kgmi@kgmi.com

PORT ANGELES, Wash. (Metro) – A 34-year-old Sequim man is behind bars, after two registered sex offenders were found murdered near Port Angeles yesterday.

Clallam County Sheriff W.L. Benedict tells Q13fox.com Patrick Drum left a note saying "it had to be done."

Early yesterday morning, officers found 57-year-old Jerry Wayne Ray shot to death in a wooded area near Port Angeles.

Drum is also accused of fatally shooting 28-year-old Gary Blanton, who rented a room from Drum.

Deputies say Drum was arrested after he was found hiding in a shed off Blue Mountain Road, between Port Angeles and Sequim.

Drum is being held in Clallam County Jail in Port Angeles.

Copyright © 2012 Metro Networks Inc.

Filed Under :
Topics : [Law Crime](#)
Social : [Law Crime](#)
People : [Gary Blanton](#), [Jerry Wayne Ray](#), [Patrick Drum](#), [W.L. Benedict](#)



Flash Mob To Support Canadian Tribes Hits B'ham
Supporters crowded Bellis Fair Mall

Trio Hurt When Vehicle Crashes Into Pole
Single car accident on Christmas Day.

No More Free Holiday Parking Downtown
Ends Wednesday, Dec. 26

3-Year-Old Injured In Crash on Smith Road
Driver facing DUI, vehicular assault charges

Mount Baker Highway Re-opened
Temporary closure Saturday night.

Highway 2 Closed From Stevens Pass To Leavenworth
Two died in car crash.

National Corporation Takes Local Interest

Where your smile begins...

Apple Pediatric Dentistry
applepediatricdentistry.com
 Serving Patients Ages 1-18
 All Insurance Accepted

Two locations to serve you:
Stanwood **Ferndale**
(360)629-0580 **(360)389-3198**

[Click here to find out more!](#)

SCHOOL CLOSINGS & DELAYS

[CLICK HERE FOR THE LATEST](#)



KGMI BLOGS
[click here to read staff blogs](#)

[Sign Up](#) Create an account or [log in](#) to see what your friends like.

KGMI News/Talk 790 on Facebook
Like 2,031

KGMI News/Talk 790 shared a link.

Trio Hurt When Vehicle Crashes Into Pole
kgmi.com
A one car accident West of Lynden left three young people injured late on Christmas Day.

3 hours ago via Vortal Post

Facebook social plugin

ATTACHMENT 9

Media Coverage (Newspaper) of murder of two
Registered sex offenders Sequim, WA area, June 8, 2012

may get 10 percent raise

said.

Commissioners will consider approving the raise at their next board meeting June 20.

"We discussed this quite a bit, and we are concluding that we would like to make a recommendation to the board that we increase our CEO's salary by 10 percent," Hordyk said.



Lewis

Comparisons

By comparison, Jefferson Healthcare CEO Mike Glenn earns \$225,000 per year.

Whidbey General Hospital CEO Tom Tomasino's salary is \$230,000.

"Our CEO is way below that, and he's got a much

bigger job than both of those two entities," Commissioner Jim Leskinovitch said.

"The other thing is Eric has been reticent in having salary increases because of the economic conditions our hospital is facing," Leskinovitch continued.

"He's probably about as magnanimous as a person I've seen that way.

"But we can't continue to take that kindness from him, so we're making just a small step in rectifying that."

Commissioner John Nutter added: "I think it's long overdue.

"Even if the raise goes through as proposed, that still leaves him \$50,000 below comparable and smaller hospitals," Nutter said.

Lewis did not comment on the proposed raise.

An OMC survey of

Northwest hospitals found that the median CEO salary for hospitals with \$75 million to \$200 million in operating expenses is \$300,281.

OMC budgeted \$140.9 million in operating expenses this year.

Median salary

The survey found that the median salary for CEOs of hospitals with 375 to 1,200 full-time employees is \$251,000.

OMC has 1,100 employees working at its 80-bed hospital and satellite clinics.

Jefferson Healthcare and Forks Community Hospital are critical-access hospitals, meaning they have 25 beds or fewer.

Forks Community Hospital co-administrators Camille Scott and John Sherrett earn per-diem

wages, Sherrett said.

He said the rates vary and would not be comparable to a CEO's salary.

Since Lewis became CEO, union-represented nurses received total raises of more than 20 percent through longevity steps and annual pay increases, according to a memo provided by OMC communications staff.

"Considering the above, and the fact that Eric Lewis is a proven administrator with tremendous financial acumen, excellent leadership skills and a vision for the future of health care in our community, he should receive a 10 percent raise," the memo concluded.

Reporter Rob Ollikainen can be reached at 360-452-2345, ext. 5072, or at rob.ollikainen@peninsuladailynews.com.

Killings prompt attorney to seek changes to sex-offender registry

PENINSULA DAILY NEWS AND NEWS SOURCES

SEATTLE — A Seattle attorney who represents sex offenders said the state should change its sex offender registration system following the murders of two convicted sex offenders in the Sequim area last weekend.

Attorney Brad Meryhew said lawmakers should consider how registration and public attention affect offenders' ability to find housing and work.

It also may make them targets of violence, such as the two men killed in Clallam County, he said.

Patrick B. Drum, 34, of Sequim was charged Wednesday in county Superior Court with burglary, unlawful possession of a firearm and two counts of aggravated murder in the shooting deaths of Jerry W.

Port Angeles, and Drum's housemate, Gary L. Blanton Jr., 28.

After Drum's arrest Sunday near Blue Mountain Road following an extensive manhunt, he told authorities he killed the men because they were convicted sex offenders and that he had planned to kill a sex offender in Jefferson County, according to charging documents.

Meryhew is part of a panel meeting before the state House Public Safety & Emergency Preparedness Committee on June 27 in Olympia that will discuss a variety of legal issues, said

state Rep. Christopher Hurst, the committee chairman whose 31st District includes parts of King and Pierce counties.

Panel scheduled

Hurst told the *Peninsula Daily News* Thursday that the panel was scheduled three months ago and "was not a reaction" to the killings.

Meryhew told KIRO-FM 97.3 there are 20,000 people on the state sex offender registration rolls and that the system needs to be changed to stop vilifying those who pose little risk.

He said he supports registration for dangerous offenders.

Ray and Blanton, the father of two boys ages 1½ and 2½, were categorized as Level II offenders. Level I is the lowest risk and Level III the highest.

Ray, convicted in 2002, had pleaded guilty to first-degree rape of a child.

Blanton, convicted in 2001, had pleaded guilty to third-degree rape for an offense that occurred with his girlfriend while he was in high school. Blanton's wife, Leslie, said in an earlier interview with the *Peninsula Daily News*.

Doctor's Appointment in Seattle?

ATTACHMENT 10

Sworn affidavit, Mrs. Dudgeon, January 3, 2013

- 1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
5. At no time from his release from incarceration in mid 1985 until the termination of his probation in mid 1987 was Skip ever without another adult in attendance when in the presence of my then under aged daughter Michele, who was 12 - 14 years old during that time.
 6. Due to Skip's diligent adherence to the conditions of his probation it was terminated 2 ½ years early in mid 1987 and we continued to spend exclusive time together while living separately until late 1988 when we bought a home in Jefferson County, Washington and moved in together along with my son, Phillip, and my daughter Michele who would be 15 that November.
 7. Skip and I married in January of 1998 and in January of 2001, Skip and I moved into and purchased a residence, our current home, in Clallam County, Washington in the McFarland Farms district of Happy Valley near Sequim, Washington.
 8. Later that year I had a conversation with Mr. J.F., the spokesman for the McFarland Farms Association of Happy Valley, a home owners association, and with his wife, regarding a family of Mexican origin who had moved into a home vacated by a family with a teenage son. J.F. and his wife were trying unsuccessfully to convince me to sign a petition to get the Mexican family to move out. During the course of the conversation the wife stated they, the association members, were able to "get rid of the sex pervert who previously lived there".
 9. On one occasion in the recent past I had a casual conversation with a Mr. Allen, one of the property owners who, along with his wife, Dr. Allen, DVM, live in the same country residential enclave near Sequim, Washington called Happy Valley in which my husband and I have our home. In that conversation Mr. Allen was expressing at great length his displeasure with certain aspects of governmental and judicial procedures in general, and at some point, unaware of my husband's

1 circumstances, he randomly expressed his specific displeasure with the
2 release of Level III sex offender. He stated he could tolerate a Level
3 I in the neighborhood, Happy Valley, but would "not tolerate" a Level
4 III.

5 10. The above cited incidents of open and virulent hostility towards
6 Level III sex offenders expressed by my neighbors who are unaware, as
7 far as I can determine, of Skip's circumstances, and the murder just
8 this year of two ex-sex offenders living in my immediate vicinity, by
9 an individual who had been incited to homicidal rage by the rabid
10 inflammatory publicity associated with the release of Level III sex
11 offenders to the community, make me extremely apprehensive, even
12 fearful for Skip's life and possibly my own, were he to be unfairly and
13 unwarrantedly labeled as a Level III sex offender upon his
14 unconditional release from the SCC.

15 11. Skip has already demonstrated his ability and willingness to abide
16 by whatever conditions of release that are imposed. The home
17 environment here in the rural area where our home is located would be
18 an ideal environment for Skip to re-integrate into community life
19 should he be given that chance by being released to his home as a Level
20 I.

21 12. I am aware of what my responsibilities would be as Skip's sponsor
22 under the conditions of his release and can assure the Court that I
23 would not tolerate, and my firm belief is that Skip would not knowingly
24 initiate, any deviation from those conditions.

25 13. All facts stated above are true and factual to the best of my
knowledge.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Respectfully sworn and submitted this 3 day of January, 2013



M. Claudine Dudgeon

M. Claudine Dudgeon
921 McFarland Dr.
Sequim, WA 98382-9774

Angela M. Hodges
Notary Public In and For
The County of Skagit
State of Washington,
My Commission Expires: 5-9-16

ATTACHMENT 11

State's Motion for Voluntary Dismissal

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

**STATE OF WASHINGTON
KITSAP COUNTY SUPERIOR COURT**

<p>In re the Detention of: CECIL DUDGEON, Respondent.</p>	<p>NO. 05-2-01588-0 STATE'S MOTION FOR VOLUNTARY DISMISSAL AND MEMORANDUM OF AUTHORITIES</p>
---	---

PETITIONER, STATE OF WASHINGTON, by and through Robert Ferguson, Attorney General, and Brooke Burbank, Assistant Attorney General, moves the Court for an order dismissing this civil commitment proceeding. This motion is brought pursuant to CR 41(a)(1)(B) and is based on the December 13, 2012, psychological evaluation submitted by Dr. Amy Phenix, attached as Appendix 1; the June 11, 2012 Annual review submitted by Dr. Paul Spizman attached as Appendix 2; and the October 3, 2012, Notice of Right to Petition for Unconditional Release with Secretaries [sic] Approval, attached as Appendix 3.

I. STATEMENT OF FACTS

On May 3, 2007, Mr. Dudgeon was committed to the Department of Social and Health Services (DSHS) as a Sexually Violent Predator (SVP). The SVP statute requires DSHS to review Mr. Dudgeon's mental condition annually to determine if he continues to meet the criteria of an SVP.

On October 9, 2012, DSHS submitted the 2012 Annual Review of Mr. Dudgeon in which Dr. Paul Spizman opined that Mr. Dudgeon no longer met the SVP criteria, due in large

1 part to his advanced age of 79. As a result of this report, the Secretary's designee,
2 Donald Gauntz, the Interim CEO of the SCC, authorized Mr. Dudgeon to petition for
3 unconditional release.

4 The State retained Dr. Amy Phenix, Ph.D. who was the original expert in the case, to
5 review the case and offer an opinion regarding Mr. Dudgeon's mental condition and risk for
6 sexual re-offense. On December 13, 2012, Dr. Phenix. submitted a psychological evaluation of
7 Mr. Dudgeon in which she opined that Mr. Dudgeon does not currently suffer from the
8 required mental abnormality. She also assessed his risk for sexual re-offense as low. Based on
9 the scores of several actuarial instruments, she assessed Mr. Dudgeon's current risk for sexual
10 re-offense as somewhere between 1% and 4% likelihood. Dr. Phenix ultimately opined that in
11 her professional opinion, Mr. Dudgeon does not currently meet the statutory definition of an
12 SVP as that term is defined in RCW 71.09.020.

14 II. MEMORANDUM OF AUTHORITIES

15 A. Evidentiary Requirements for Civil Commitment as a Sexually Violent Predator

16 The term "sexually violent predator" is defined in RCW 71.09.020(18) as a person
17 who:

- 18 1) Has been convicted of or charged with a crime of sexual violence; and
- 19 2) Suffers from a mental abnormality or personality disorder; and
- 20 3) Whose mental abnormality or personality disorder makes the person
21 likely to engage in predatory acts of sexual violence if not confined in a
secure facility.

22 Additionally, the mental abnormality or personality disorder must cause the person to have
23 "serious difficulty" controlling his sexually violent behavior. *Kansas v. Crane*, 534 U.S. 407,
24 122 S. Ct. 867, 151 L.Ed.2d 856 (2002); *In re Detention of Thorell*, 149 Wn.2d 724, 736,
25 72 P.3d 708 (2003), *cert. denied*, 541 U.S. 990, 124 S. Ct. 2015, 158 L. Ed. 2d. 496 (2004).

1 **B. Expert Opinion Testimony in SVP Cases**

2 In civil commitment proceedings pursuant to RCW 71.09, the State must prove that a
3 person suffers from a mental abnormality or personality disorder that causes him serious
4 difficulty controlling his sexually violent behavior primarily through expert opinion testimony.
5 The expert typically relies, as did Dr. Phenix, on a records review of documents addressing the
6 person's criminal, sexual, incarceration, educational, medical, mental health, family, and
7 treatment history, as well as a clinical interview. The expert then offers an opinion "to a
8 reasonable degree of psychological certainty" as to whether the person has the required mental
9 abnormality or personality disorder.

10 Additionally, the State must prove that the individual's mental abnormality or
11 personality disorder makes him more likely than not to engage in predatory acts of sexual
12 violence if he is not confined in a secure facility. RCW 71.09.020(18). This is also
13 accomplished primarily through expert opinion testimony. A risk assessment typically begins
14 with an actuarial assessment. Actuarial instruments are now used in virtually all SVP cases
15 and their use has been endorsed by *Thorell*, 149 Wn.2d at 753-58. In *Thorell*, the court held
16 that the actuarial risk assessment tools used in SVP cases are not subject to a *Frye* test because
17 they are not based on novel scientific techniques, but rather on established statistical methods.
18 *Id.* At 753-6. In this case, Dr. Phenix provided a report on these issues pursuant to
19 RCW 71.09.090, and ultimately opined that Mr. Dudgeon no longer meets the statutory
20 definition of an SVP.

21 **C. The State is Unable to Meet Its Burden at the Recommitment Trial Because**
22 **Dr. Phenix Opines that Mr. Dudgeon No Longer Meets the SVP Criteria**

23 At any trial for recommitment, it is the State's burden to prove beyond a reasonable doubt
24 that Mr. Dudgeon continues to suffer from a mental abnormality or personality disorder that
25 causes him serious difficulty controlling his sexually violent behavior and makes him likely to
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

engage in predatory acts of sexual violence if not confined in a secure facility.
RCW 71.09.090(3)(c). The State cannot meet its burden.

Dr. Phenix's December 13, 2012, psychological evaluation establishes that the State would have no evidence with which to proceed at trial to support Mr. Dudgeon's ongoing detention as an SVP. In addition, the SCC Superintendent has recommended that Mr. Dudgeon be released. Therefore, the State moves the Court for entry of its proposed order, dismissing the civil commitment petition.

RESPECTFULLY SUBMITTED this 25th day of January 2013.

ROBERT FERGUSON
Attorney General



BROOKE BURBANK, WSBA #26680
Assistant Attorney General
Attorney for Petitioner

1
2
3
4 IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
5 DIVISION II
6

7 CECIL DUDGEON,)
8) Case No.: 13-2-02714-5
9 Appellant,) Court of Appeals Cause No.: 46032-7-II
10 v.)
11) DECLARATION OF SERVICE
12 STEVE BOYER, SHERIFF OF)
13 KITSAP COUNTY,)
14 Respondent.)
_____)

15 The undersigned hereby declares, under penalty of perjury under the laws of Washington
16 State, that he deposited the below noted documents in the United States Mail, First Class Postage
17 prepaid on the 2nd day of JUNE, 2014, to be sent to the following entities:
18

19 DEBORAH BOE, DEPUTY PROSECUTING ATTORNEY
20 KITSAP COUNTY PROSECUTOR'S OFFICE, CIVIL DIVISION
21 614 DIVISION STREET, MS 35A
22 PORT ORCHARD, WA 98366

23 COURT OF APPEALS
24 DIVISION II
25 950 BROADWAY STE 300
26 TACOMA, WA 98402

- 27 1) APPELLANT'S REPLY TO RESPONDENT'S OPENING BRIEF RESPONSE
28 2) CERTIFICATE OF MAILING

29 Signed 2nd day of JUNE, 2014 at Port Orchard Kitsap County
30

31 
32 _____
CECIL DUDGEON, APPELLANT, PRO SE