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Supreme Court No. 101520-8

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

SPOKANE COUNTY, PETITIONER

v.

JILMA MENESES, IN HER OFFICAL CAPACITY AS
SECRETARY OF THE WASHINGTON STATE
DEPARTMENT OF SOCIAL AND HEALTH SERVICES,
RESPONDENT

**REPLY TO ANSWER TO
PETITION FOR WRIT OF MANDAMUS**

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I. INTRODUCTION

The Department does not significantly contest factual issues raised by Petitioner Haskell. Instead, it acknowledges the concerning state of competency evaluations and restoration in Washington but contends the federal court's monitoring under its *Trueblood* Settlement Agreement is adequate.

But this monitoring, which does not address all of Mr. Haskell's concerns and has not prevented wait times from ballooning into excessively long periods, is plainly inadequate.

Mr. Haskell is beneficially interested in the speedy resolution of the cases he is charged with prosecuting. Mr. Haskell respectfully asks this Court to grant his petition and issue a writ of mandamus, compelling the Secretary to provide restoration services in a timely manner.

II. ARGUMENT

A. THE DEPARTMENT HAS A CLEAR LEGAL DUTY, WHICH IT CANNOT INDEFINITELY DEFER, TO PROVIDE COMPETENCY EVALUATIONS AND RESTORATION SERVICES, AS ORDERED BY THE COURT.

The Department attempts to address its noncompliance with court orders to provide competency evaluations or competency restoration services for defendants by arguing it has no clear duty to perform these in a reasonable length of time pursuant to RCW 10.77.068. *Trueblood* already identified the Department's obligation to perform competency evaluations under RCW 10.77.060. *Trueblood v. Washington State Department of Social and Health Services*, 101 F. Supp. 3d 1010, 1015 (W.D. Wn. 2015). Mandamus is appropriate to compel the Department to perform ongoing, precise acts it is obligated to complete, such as appoint an evaluator or admit defendants for

restoration treatment. *See Kanekoa v. Washington State Dept. of Social & Health Services*, 95 Wn.2d 445, 450, 626 P.2d 6 (1981).

Citing discretion to justify noncompliance with explicit court orders is hardly persuasive. RCW 10.77.060(c) mandates that a court appointed evaluator administer evaluations in the jail or community. RCW 10.77.086 makes no distinctions regarding pre-trial custody status for the Department's obligation to provide restoration services. RCW 10.77.068 does not authorize indefinite postponement or effective refusal to comply. The Department argues that because the timeframes set forth in RCW 10.77.068 are "guidelines," the Department is under no clear duty to complete the evaluations and restoration services as argued by Mr. Haskell. The Department's current conduct is effective noncompliance with court orders and the Department's statutory duties.

This Court should use its authority to ensure the Department performs the acts it is required to pursuant to a writ of mandamus and take steps to ensure complete enforcement of the writ. RCW 7.16.280. The Department has a clear statutory obligation to provide evaluation and restoration services as ordered by the court regardless of pre-trial custodial status, and it cannot decline to perform its obligations under the guise of departmental discretion or the absence of hard statutory deadlines.

B. *TRUEBLOOD* AND THE ADMINISTRATIVE PROCEDURES ACT DO NOT PROVIDE ADEQUATE REMEDIES AT LAW.

The Department suggests the ongoing *Trueblood* settlement agreement constitutes an adequate alternative remedy to mandamus. While *Trueblood* established the Department's obligations to provide appropriate treatment for incompetent defendants in pre-trial custody, the Department's response

indicates no opportunity for a nonparty to the settlement agreement to seek relief in the *Trueblood* Settlement Agreement. The Spokane County Prosecutor is not a party to the *Trueblood* Settlement Agreement. Mr. Haskell notes with dismay that the extent of delays and the Department’s “inadequate planning and institutional resistance to change” that existed during the *Trueblood* litigation is a greater problem today than at the inception of the *Trueblood* litigation. *Trueblood v. Wash. State Dep’t of Soc. & Health Servs.*, 2016 WL 4268933, *9 (W.D. Wn. August 15, 2016).¹ Indeed, current delays are considerably longer than raised by the *Trueblood* petitioners.

Trueblood encompasses defendants in pre-trial custody. It is also a settlement agreement that involves different parties. The

¹ Cited pursuant to GR 14.1(b), which allows citation to unpublished authority in other jurisdictions if it is allowed to be cited by that jurisdiction. Federal Rules of Appellate Procedure 32.1 authorizes unpublished federal cases after 2007 to be cited.

Department cannot establish that the *Trueblood* settlement is a viable remedy for the Petitioner when the Petitioner is not a party or a class member to that action or settlement agreement.

The Department suggests the APA is an alternative remedy but does not concede Mr. Haskell would even have standing to pursue a remedy under that statute. The APA can provide a remedy for agency inaction when statutory criteria is met pursuant to RCW 34.05.570(4)(b). *Hillis v. State, Dept. of Ecology*, 131 Wn.2d 373, 381-383, 932 P.2d 139 (1997). Under RCW 34.05.570(4)(b), “[a] person whose rights are violated by an agency’s failure to perform a duty that is required by law to be performed may file a petition for review.” A petition may only be filed in limited circumstances where an agency’s decision is unconstitutional, outside of the statutory agency conferred by law, arbitrary or capricious, or taken by persons not authorized to act pursuant to the agency’s rules. RCW 34.05.570(4)(c)(i)-

(iv). Judicial action under the APA also generally requires administrative remedies be exhausted before an appeal to judicial authority may be made. *American Property Casualty Insurance Association v. Kreidler*, ___ Wn.2d ___, 520 P.3d 979, 982-983 (2022); RCW 34.05.534.

The Department fails to highlight any potential administrative remedies that could be exhausted, which is a prerequisite under RCW 34.05.534 before one may seek judicial review under chapter RCW 34.05. The purpose of the APA is to attempt to resolve issues in the appropriate agency forum before turning to the courts. If no such forum is available, there is no reasonable way to exhaust remedies.

The Department appears to suggest directly seeking judicial review under RCW 34.05.570(4) to contest the Department's inaction. However, only a "person whose rights are violated by an agency's failure to perform a duty" can bring an

action under RCW 34.05.570(4)(b). While our law does not clearly define what right must be violated to establish standing under RCW 34.05.570(4)(b), case law addressing RCW 34.05.570 and its predecessor indicates a petitioner must establish they have a clear statutory or fundamental right that is being violated to seek relief. *See Shoreline Community College Dist. No. 7 v. Employment Sec. Dept.*, 120 Wn.2d 394, 401-403, 842 P.2d 938 (1992); *Qwest Corp. v. Wash. Utilities and Transp. Com'n*, 140 Wn. App. 255, 260, 166 P.3d 732 (2007). Mr. Haskell does not have a statutory right to competency evaluations or restorations, which means Mr. Haskell cannot establish his rights are violated. On the other hand, the Department has a statutory obligation to perform these evaluations, and as explained later in this reply, Mr. Haskell is beneficially interested in the Department performing its legal obligation. The Department tacitly acknowledges Mr. Haskell

likely lacks standing to bring a claim under RCW 34.05.570, which only further confirms this is not an available remedy.

Kreidler is inapplicable to this petition. *Kreidler* involved a petitioner seeking mandamus following a decision in a contested agency hearing where the agency sought review of that decision and attempted to use mandamus to compel such review. 520 P.3d at 982-983. This Court concluded RCW 5.34.570 was the appropriate vehicle to ensure judicial review of the administrative hearing decision instead of mandamus. *Id.* There is no clear administrative hearing decision to appeal in this case. The suggestion that Petitioner attempt a remedy, that the Department effectively concedes is unavailable, only confirms absence of a “plain, speedy and adequate remedy” at law. RCW 7.16.170.

C. THE DEPARTMENT’S SUGGESTION THAT PETITIONER USE HIS OWN EVALUATORS DOES NOT NEGATE THE DEPARTMENT’S DUTY TO COMPLY WITH THE LAW AND COURT ORDERS AND IS NOT A VIABLE REMEDY TO ALL ISSUES RAISED IN THIS WRIT.

Competency evaluations are ordered by a court pursuant to RCW 10.77.060(1)(a), upon motion of any party in the proceeding. It is the court which orders the evaluation and determines the evaluator, so long as the prosecuting attorney approves. RCW 10.77.060(1)(a). Petitioner can object to the designated evaluator, but RCW 10.77.060(1)(a) leaves it to the court’s discretion to appoint a qualified professional.

Nowhere does the Department cite authority that the Department can refuse to perform evaluations that are ordered by a court or that prosecuting attorneys of the various counties have the means—let alone obligation—to provide competency evaluators to the court. Even if such rules exist, this Court acknowledged that if a party has discretion under law to refer to

state or county services, the individual with the authority to make the appropriate referral and the state agency is not alleviated of its duty to act as required by law merely because other options exist. *Pierce County Office of Involuntary Commitment v. Western State Hospital*, 97 Wn.2d 264, 272, 644 P.2d 131 (1982).

This Court should recognize the authority of trial court judges to define the appropriate evaluator. The Department is supposed to be an organized, appropriate entity to provide professionals for evaluations and restoration services, with authority to enter into agreements as necessary to provide necessary evaluators. *See* RCW 10.77.060(4). The Department establishes no legal structure or funding mechanism for a prosecuting attorney or county that would relieve the Department of its legal obligations or address the potential conflict of interest between the prosecutor selecting and funding evaluators on

criminal cases it has charged. The Department has mandatory statutory obligations to provide competency services. The Prosecutor does not. The Department cannot shirk its statutory duties by suggesting other entities without a duty perform its job.

D. THE SPOKANE COUNTY PROSECUTOR IS BENEFICIALLY INTERESTED IN THE OUTCOME OF THIS MATTER.

This matter is brought by the Spokane County Prosecutor in his official capacity under RCW 36.27.020. While the caption of the petition identifies “Spokane County” as the Petitioner, this is a scrivener’s error. The caption should reflect that the Petitioner is Lawrence Haskell in his official role as the Spokane County Prosecutor.

The Department contends throughout its reply that the Prosecutor is not beneficially interested in the issue at hand. This is contrary to the findings of *Trueblood* that specified the prosecuting attorneys have a legitimate interest in timely

competency evaluations and restoration services. 101 F. Supp. 3d at 1022.

One of the Prosecutor's fundamental roles is prosecution of crime. RCW 36.27.020(4). As provided in the Prosecutor's petition and corresponding exhibits, the Department's nonfeasance means the Prosecutor is unable to prosecute a significant number of criminal cases when there are doubts about a defendant's competence. Cases are coming to a virtual standstill for months, and cases are actively being dismissed by the trial court due to the Department's delays infringing on due process rights. This also has disastrous consequences for the people on whose behalf the Prosecutor is legally obligated to prosecute cases. "For purposes of standing under the mandamus statute, all that must be shown is that the party has an interest in the matter beyond that of other citizens." *Retired Public*

Employees Council of Washington v. Charles, 148 Wn.2d 602, 620, 62 P.3d 470 (2003).

The Department argues the Prosecutor is not interested in criminal defendants' liberty interests because prosecutions often result in curtailing defendants' liberty interests. Response at 39. But the Prosecutor acts in a quasi-judicial role and has a compelling interest in ensuring defendants receive fair and speedy trials on the merits without due process violations caused by the Department.

“A prosecutor must enforce the law by prosecuting those who have violated the peace and dignity of the state by breaking the law.” *State v. Monday*, 171 Wn.2d 667, 676, 257 P.3d 551 (2011) ... At the same time, a prosecutor “functions as the representative of the people in a quasijudicial capacity in a search for justice.” *Id.*

State v. Walker, 182 Wn.2d 463, 476, 341 P.3d 976 (2015).

Comment 1 to Washington's Rules of Professional Conduct further directs that “a prosecutor has the responsibility of a

minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence.”

This petition was not brought on the behalf of county agencies, such as the jail. However, the consequences of the Department’s inaction are not solely limited to the Petitioner’s ability to prosecute criminal offenses which is why this Court should accept this petition and issue the requested writ. The Department provides no authority that prohibits Mr. Haskell from addressing, as part of its justification for the petition, the numerous parties adversely impacted by the Department’s inaction. Neither *State ex. rel. Banks v. Drummond*, 187 Wn.2d 157, 182-183, 385 P.3d 769 (2016), nor RCW 36.32.120(6) prohibit from Mr. Haskell bringing this petition.

E. THIS COURT SHOULD ISSUE A WRIT OF MANDAMUS TO ADDRESS THE COMPELLING AND CRITICAL ISSUES RAISED IN THIS PETITION, WHERE THE PETITION IS NOT BARRED BY THE *TRUEBLOOD* LITIGATION.

The Department contends that this Court should not accept this petition, let alone grant it, citing the priority of action doctrine and, once again, *Trueblood*. The priority of action doctrine generally prohibits another court from exercising its jurisdiction over the same action when the actions share identity of subject matter, parties, and relief. *Bunch v. Nationwide Mut. Ins. Co.*, 180 Wn. App. 37, 41, 321 P.3d 266 (2014). This concept largely parallels the concept of res judicata. *Sherwin v. Arveson*, 96 Wn.2d 77, 80, 633 P.2d 1335 (1981). However, this rule does not bar similar cases from occurring in comparable jurisdictions. *American Mobile Homes of Washington, Inc. v. Seattle-First Nat. Bank*, 115 Wn.2d 307, 317, 796 P.2d 1276 (1990).

There are a number of reasons the priority of action doctrine does not apply to this action. The plaintiffs in *Trueblood* were in-custody criminal defendants awaiting competency services from the Department. 101 F. Supp. 3d at 1013-1014. Petitioner is not and was never a party to *Trueblood* and the roles, motivations, and interests of the parties are clearly distinct.

Though some issues in this petition may overlap with the issues raised in *Trueblood*, such as competency restoration services for in-custody pre-trial defendants, the instant petition also addresses the Department's duty to evaluate out-of-custody defendants. The Department now suggests it can legally avoid complying with court orders directing evaluations for out-of-custody defendants by indefinitely delaying services until some point in the future. *Trueblood* does not address that issue.

This Court should not accept that the Department cannot be held to account by the courts of this state—particularly this

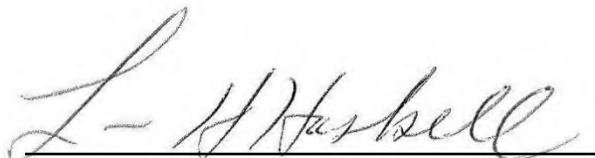
state's highest court—on a compelling issue of state law and the legal obligations of a state agency.

III. CONCLUSION

Mr. Haskell respectfully requests this Court accept this petition and issue a writ of mandamus to compel the Department to perform its statutory obligations in a timely manner.

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Dated this 17 day of January, 2023.



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IN THE SUPREME COURT OF THE STATE OF
WASHINGTON

SPOKANE COUNTY,

Petitioner,

v.

JILMA MENESES,

Respondent,

NO. 101520-8

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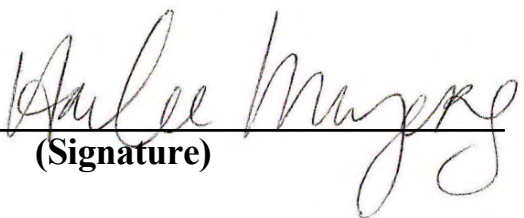
I certify under penalty of perjury under the laws of the State of Washington, that on January 17, 2023, I e-mailed a copy of the Reply to Answer to Petition for Writ of Mandamus in this matter, pursuant to the parties' agreement, to:

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SPOKANE COUNTY PROSECUTOR

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