

SUPREME COURT OF WASHINGTON

In re the Detention of Post, 170 Wash. 2d 302

241 P.3d 1234 (2010) · Decided October 28, 2010

SUMMARY

The Washington Supreme Court held that evidence concerning treatment that would be available to a person if civilly committed as a sexually violent predator, and the possibility of later release to a less restrictive alternative, is irrelevant to the determination of whether the person currently meets the statutory definition of a sexually violent predator. The court further held that admitting that evidence was not harmless error and affirmed the Court of Appeals’ remand for further proceedings. It also held that the possibility of a future sexually violent predator petition based on a recent overt act is relevant, while leaving admissibility under ER 403 to the trial court.

CASE DETAILS

COURT	Supreme Court of Washington
WRITING FOR THE COURT	Owens, J.; Alexander, J.; Chambers, J.; Fairhurst, J.; Johnson, J.; Madsen, J.; Sanders, J.; Stephens, J.
JURISDICTION	Washington
DECIDED	October 28, 2010
DISPOSITION	other
PROCEDURAL POSTURE	Post appealed a jury determination that he was a sexually violent predator. The Washington Supreme Court reviewed the Court of Appeals' reversal and remand for a new trial, including the exclusion of evidence concerning the possibility of a future sexually violent predator commitment petition based on a recent overt act.
STANDARD OF REVIEW	Evidentiary rulings are reviewed for abuse of discretion. A trial court abuses its discretion when its exercise of discretion is manifestly unreasonable or based on untenable grounds or reasons. The court applied a reasonable-probability harmless-error standard to the erroneous admission of evidence.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Charles Post v. State of Washington

TOPICS

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QUESTIONS PRESENTED

1. Whether the State may introduce evidence at an SVP determination trial concerning treatment that would be available if the respondent were committed and the possibility of future release to a less restrictive alternative.
2. Whether admission of the irrelevant treatment and future-release evidence was harmless error.
3. Whether evidence that a released respondent could be subject to a new SVP commitment petition upon committing a recent overt act is relevant to the SVP determination.

HOLDINGS

1. At an SVP determination trial, evidence concerning treatment that would become available if the respondent were committed, but had not yet been received, and evidence concerning possible future release to a less restrictive alternative is irrelevant to whether the respondent currently meets the statutory definition of an SVP and is inadmissible under ER 402.
2. The erroneous admission of evidence concerning postcommitment treatment and potential less restrictive release was not harmless.
3. Evidence that a released respondent could be subject to a new SVP commitment petition if he commits a recent overt act is relevant to the SVP determination and does not violate RCW 71.09.060(1), although the trial court must separately determine admissibility under ER 403.

KEY QUOTATIONS

“At the SVP determination trial, there is but one question for the finder of fact: Has the State proved, beyond a reasonable doubt, that the respondent is an SVP?” (at 310)

“Post’s opportunities if committed have no obvious bearing on his actions if he is not committed, as those two potential realities are mutually exclusive.” (at 311)

“Post’s knowledge of the consequences for engaging in such conduct may well serve as a deterrent to such conduct and, therefore, has some tendency to diminish the likelihood of his committing another predatory act of sexual violence.” (at 317)

FACTUAL BACKGROUND

The State sought to civilly commit Charles Post as a sexually violent predator when he was scheduled to be released from confinement for prior burglary and rape convictions. At his second SVP determination trial, the State introduced extensive evidence concerning treatment available at the Special Commitment Center if Post were committed, potential future release to a less restrictive alternative, and comparative recidivism rates. Post presented a voluntary community treatment and support plan as evidence that he would be less likely to reoffend

if released unconditionally. The jury found Post to be an SVP, after a prior jury had deadlocked when the State did not introduce the disputed SCC-treatment evidence.

PROCEDURAL HISTORY

The State petitioned for Post's civil commitment as a sexually violent predator after his scheduled release from criminal confinement. Post's first determination trial ended in a mistrial; at his second trial, the jury found him to be an SVP. The Court of Appeals reversed and remanded for a new trial, holding that evidence concerning treatment not yet received and possible future release to a less restrictive alternative was irrelevant and that its admission was not harmless. The Supreme Court affirmed the Court of Appeals and remanded for further proceedings, while holding that evidence concerning a possible future recent-overt-act petition is relevant.

DISPOSITION

other

REMAND INSTRUCTIONS

The case was remanded for further proceedings and a new trial consistent with the holding that postcommitment treatment and potential less restrictive release evidence is irrelevant and inadmissible. On retrial, evidence concerning the possibility of a recent-overt-act petition should be considered relevant, subject to the trial court's ER 403 analysis.

CASES CITED

- City of Auburn v. Hedlund, 165 Wn.2d 645, 654, 201 P.3d 315 (2009)
- State v. Powell, 126 Wn.2d 244, 258, 893 P.2d 615 (1995)
- In re Detention of Audett, 158 Wn.2d 712, 727, 147 P.3d 982 (2006)
- In re Detention of Thorell, 149 Wn.2d 724, 736, 742, 753, 758-59, 72 P.3d 708 (2003)
- In re Detention of Brooks, 145 Wn.2d 275, 298, 36 P.3d 1034 (2001)
- In re Detention of Turay, 139 Wn.2d 379, 403-04, 986 P.2d 790 (1999)
- People v. Rains, 75 Cal. App. 4th 1165, 1167-70, 89 Cal. Rptr. 2d 737 (1999)
- In re Cross, 99 Wn.2d 373, 379, 662 P.2d 828 (1983)
- State v. Neal, 144 Wn.2d 600, 611, 30 P.3d 1255 (2001)
- State v. Smith, 106 Wn.2d 772, 780, 725 P.2d 951 (1986)
- State v. Vy Thang, 145 Wn.2d 630, 648, 41 P.3d 1159 (2002)
- State v. Harris, 141 Wn. App. 673, 679-80, 174 P.3d 1171 (2007)
- Turner v. Superior Court, 105 Cal. App. 4th 1046, 130 Cal. Rptr. 2d 300 (2003)
- Commonwealth v. Chapman, 444 Mass. 15, 825 N.E.2d 508 (2005)

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