IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In re the Detention of:	**No. 29565-6-III**
L.U.	**Division Three**
	UNPUBLISHED OPINION

Kulik, C.J. — A jury found that L.U. met the criteria for commitment under chapter 71.05 RCW. As a condition of L.U.'s least restrictive alternative (LRA), the trial court ordered L.U. to answer all necessary questions during evaluations, without evasion or deception. L.U. appeals this condition, contending that the court erred by ordering him to answer all questions without also granting him immunity from criminal charges arising from any treatment disclosures. Both the State and L.U. concede the issue is technically moot because the LRA has expired. We agree the issue is moot. And we conclude that the condition is unique, unlikely to reoccur, and is not an issue of continuing and substantial public interest. Therefore, we dismiss the appeal.

FACTS

In July 2006, L.U. was charged with felony harassment for threatening to kill his neighbor with a pair of scissors. Before trial, L.U. was evaluated at Eastern State Hospital (ESH) for competency. An ESH psychologist determined that L.U. suffered from paranoid schizophrenia and was incompetent to stand trial.

A period of commitment and forced medication did not render L.U. competent. As a result, the trial court dismissed the harassment charge in June 2007. The trial court sent L.U. to ESH. In late 2007, he was released to independent living under a court-ordered LRA. The LRA contained conditions, including ordering L.U. to attend treatment appointments and to allow the free release of information between the parties controlling his treatment and his LRA. Over the next three years, L.U. was the subject of continuous orders of LRA confinement, with similarly-worded conditions in each of these orders.

In August 2010, the State-designated mental health professional filed a sixth petition seeking commitment of L.U. under chapter 71.05 RCW for 180 days. A jury trial was held on the matter in October 2010.

The parties stipulated that L.U. was previously charged with felony harassment in July 2006. L.U.'s psychiatrist, Dr. William Bennett, and L.U.'s case manager, Jennifer

Berdais, both testified at trial. According to Dr. Bennett, L.U.'s paranoid schizophrenia was currently manifesting itself in the delusion that Dr. Bennett broke into L.U.'s apartment. In addition, in July 2010, L.U. began abruptly ending his meetings with his providers by walking out. These observations led Dr. Bennett to believe that L.U. was decompensating.

Dr. Bennett was concerned that L.U. was not taking his medication or that his current dosage was inadequate. In either case, Dr. Bennett wished to monitor the administration of L.U.'s medication more closely. Dr. Bennett opined that L.U. should remain under a commitment order because, absent an order, L.U. would not pursue treatment, which would ultimately endanger L.U. and the community.

Ms. Berdais also noted that L.U. became less cooperative in July 2010. For example, L.U. started bringing a clock to his bi-weekly meetings and telling Ms. Berdais that she only had two minutes to ask questions when she usually met with clients for at least 45 minutes. L.U. assured Ms. Berdais that he took his medication as prescribed. However, Ms. Berdais opined that L.U.'s current level of medication was ineffective because he was showing symptoms of his mental disorder.

L.U. told Dr. Bennett and Ms. Berdais that he would not take his medication absent a court order.

The jury found L.U. met the criteria for involuntary commitment under RCW 71.05.320(3)(c) and (d). The jury found that L.U. had a mental disorder and, as a result of the disorder, he (1) presented a substantial likelihood of repeating acts similar to the charged felony harassment, and (2) continued to be gravely disabled.

After the verdict, the trial court ordered the conditions of L.U.'s previous LRA to remain in effect. However, at a sentencing hearing two weeks later, the State proposed a new condition. In this new condition, the trial court ordered that L.U. attend treatment appointments where the physician and case manager would ask necessary questions and that L.U. was to answer the questions without evasion or deception. The condition also stated that candid and complete discussion of symptoms and side effects is needed to understand L.U.'s mental, emotional, and physical condition.

L.U. appeals the new condition of his LRA, alleging that the condition could extend to probing for past criminal behavior in violation of his Fifth Amendment rights. Because there could be a violation, he contends the trial court should have granted him immunity from any criminal charges arising from such disclosures. He also contends that he was denied effective assistance of counsel because his attorney failed to request immunity.

ANALYSIS

An appeal is moot if the court cannot grant the relief requested. *In re Cross*, 99 Wn.2d 373, 376-77, 662 P.2d 828 (1983). However, a case considered moot can still be decided if "matters of continuing and substantial public interest are involved." *Sorenson v. City of Bellingham*, 80 Wn.2d 547, 558, 496 P.2d 512 (1972). To determine whether an issue has sufficient public interest, the court should consider (1) whether the issue is of a public or private nature, (2) the need for authoritative judicial guidance for public officers, (3) and the likelihood that the question will reoccur. *In re Det. of Swanson*, 115 Wn.2d 21, 24-25, 804 P.2d 1 (1990) (quoting *Dunner v. McLaughlin*, 100 Wn.2d 832, 838, 676 P.2d 444 (1984)). In addition, the court can consider "the likelihood that the issue will never be decided by a court due to the short-lived nature of the case." *Philadelphia II v. Gregoire*, 128 Wn.2d 707, 712, 911 P.2d 389 (1996). Clarification of the civil commitment statute is a matter of continuing and substantial public interest. *In re Det. of G.V.*, 124 Wn.2d 288, 294, 877 P.2d 680 (1994) (quoting *In re Det. of LaBelle*, 107 Wn.2d 196, 200, 728 P.2d 138 (1986)).

Both sides agree that the issue regarding the condition of L.U.'s LRA is technically moot. The December 8, 2010, court order committing L.U. to a LRA for a 180-day period has expired. The appellate court can no longer grant relief based on this

order.

While the State concedes that this case presents an issue of public nature, it maintains that review is unnecessary because the courts do not need guidance on the issue for future cases. Where the requested relief cannot be granted, we should dismiss the appeal. *Sorenson*, 80 Wn.2d at 558. That is the case here. And, here, the facts show that the conditions placed on L.U. were unique and not the typical conditions given in a civil commitment.

We agree that the issue is moot and we decline to give advisory opinions on an issue that is not of a continuing and substantial public interest. Therefore, we dismiss the appeal.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

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Kulik, C.J.

WE CONCUR:

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Sweeney, J. Brown, J.