NO. 89892-8

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE: PERSONAL RESTRAINT OF MATTHEW SCHLEY

STATE OF WASHINGTON,

Movant,

v.

MATTHEW SCHLEY,

Respondent.

ON APPEAL FROM THE WASHINGTON STATE DEPARTMENT OF CORRECTIONS, RISK MANAGEMENT DIRECTOR

SUPPLEMENTAL BRIEF OF RESPONDENT

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A. INTRODUCTION

Procedural due process would be a hollow concept if burdens of proof were interchangeable. The trial court determined Matthew Schley should participate in chemical dependency treatment through a prison-based drug offender sentence alternative (DOSA). Any basis for revoking the sentence had to be proved by a preponderance of the evidence to comply with due process because the deprivation of two and one half years in the community as well as substance abuse treatment constitutes a grievous loss of liberty. A prison infraction proved only by "some evidence" is necessarily insufficient to justify revocation of a DOSA sentence, which must be supported by a preponderance of the evidence.

Because Mr. Schley's DOSA was revoked due to an infraction based upon only some evidence, the Court of Appeals properly remanded for a new revocation hearing.

B. ISSUES FOR WHICH REVIEW WAS GRANTED

1. Only some evidence—a mere modicum of evidence or more than one percent—is necessary to support factual findings related to prison discipline and safety, where an individual faces an impermanent loss of good time or segregation. However, due process requires more stringent protection when an individual faces a grievous loss of liberty, such as revocation of a community-based sentencing alternative. A preponderance

of the evidence, or greater than 50 percent, must support revocation. Did DOC violate Matthew Schley's right to due process when it revoked his DOSA sentence relying only on the "some evidence" evidentiary standard and refused to evaluate whether Mr. Schley engaged in fighting by a preponderance of the evidence?

2. Due process requires DOC to inform those subject to DOSA revocation proceedings that they have a right to request counsel, and then, to determine on a case-specific basis whether counsel must be appointed. Were Mr. Schley's due process rights violated when DOC informed him he did not have a right to counsel, and DOC failed to determine whether he was entitled to counsel?

C. STATEMENT OF THE CASE

1. **The trial court exercised its discretion to provide a DOSA sentence to treat Mr. Schley's chemical dependency.**

The trial court elected to sentence Matthew Schley to concurrent DOSA sentences to treat his chemical dependency after he pleaded guilty. App. 4, 15 (judgments).[1] The court's DOSA sentence consisted of 29.75 months in custody while undergoing chemical dependency treatment and

[1] "App." refers to the numbered appendix attached to Mr. Schley's Petitioner/Appellant's Brief, No. 73872-1-I (filed May 10, 2016).

29.75 months in the community subject to conditions, including substance abuse treatment. *Id*.

2. **DOC revoked the sentence based on a scintilla of evidence.**

A standard DOC contract informed Mr. Schley he would be terminated from the treatment program if he acted violently. App. 23-26. Within a few weeks, he was charged with a serious infraction for fighting with another inmate. App. 27. Mr. Schley contested the charge, stating he did not fight and there was no "actual, physical evidence." App. 27; RP 15-17.

At a DOC disciplinary hearing, DOC supported the charge with anonymous reports. App. 27. In opposition, Mr. Schley "supplied 5 witness statements that stated they did not see any altercation." App. 36; *see* RP 18. A hearing officer found Mr. Schley guilty of a major infraction (#505) under the "some evidence" standard. App. 27; RP 27-28. In internal appeals, the finding was upheld. App. 61; RP 29-30.

The ensuing events necessarily followed from the serious infraction: First, Mr. Schley was automatically terminated from the chemical dependency treatment program "based upon the mere fact that [he was] found guilty" of the infraction. App. 28, 29; RP 22-23. Then, a hearing officer presided over a DOSA revocation hearing. App. 31; RP 2.

Mr. Schley, who was informed "no other person may represent you in presenting your case," again stated no fight had occurred and argued the allegation of fighting must be proved by a preponderance of the evidence to justify revocation. RP 15-19; App. 32, 37. However, in light of the termination from treatment, which followed automatically from the serious infraction, the hearing officer "had no other option but to revoke [the] DOSA sentence." App. 36, 54 (appeals panel summary). The hearing officer refused to examine the evidence underlying the termination from treatment and revoked the DOSA, ordering Mr. Schley to serve the remainder of the nearly-five-year sentence in prison without treatment. RP 6-7, 15-21, 33-35; App. 36, 38.

An appeals panel affirmed the revocation, emphasizing it lacked jurisdiction to review either the infraction or its evidentiary underpinnings. App. 42-54. After a risk management director affirmed, Mr. Schley filed a personal restraint petition (PRP). App. 55-60; PRP of Schley, No. 73872-1-I (filed Apr. 23, 2015).

3. **Because a conditional liberty interest cannot be revoked based on a scintilla of evidence, the Court of Appeals remanded for a new revocation hearing that complies with due process.**

The Court of Appeals remanded for a new revocation hearing that complied with due process and ordered DOC to apply the preponderance

of the evidence standard to the basis for the revocation and to provide the right to counsel. *In re Pers. Restraint of Schley*, 197 Wn. App. 862, 873-74, 392 P.3d 1099 (2017). The Court held due process required application of the preponderance standard, relying on *Morrissey v. Brewer*, 408 U.S. 471, 481, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972) and *In re Pers. Restraint of McKay*, 127 Wn. App. 165, 168, 110 P.3d 856 (2005). *Id*. at 866-70. DOC proved the fighting infraction only to the "some evidence" standard in a disciplinary hearing, but "the inevitable result of [the] finding of guilt at Schley's infraction hearing was revocation of his DOSA" and the irrevocable "loss of over two and one half years in the community." *Id*. at 868-70.

> The DOSA revocation hearing did not resolve any genuine issue of fact by a preponderance of the evidence. The DOSA hearing officer limited her finding to whether chemical dependency treatment was terminated. The essential fact for DOSA revocation was resolved at the infraction hearing for fighting. Schley's DOSA was functionally revoked once he was found guilty of fighting by "some evidence" at the infraction hearing.

Id. at 868.

The Court of Appeals also held that DOC failed to comply with the due process requirements of *Gagnon v. Scarpelli*, 411 U.S. 778, 790, 93 S. Ct. 1756, 36 L. Ed. 2d 656 (1973) and *Grisby v. Herzog*, 190 Wn. App. 786, 796-97, 805-06, 362 P.3d 763 (2015) when it notified Mr. Schley he

did not have the right to request counsel and failed to determine whether counsel should be provided. *Schley*, 197 Wn. App. at 870-72.

At oral argument in the Court of Appeals, DOC conceded "it would advise Mr. Schley that he had a right to request counsel" on remand. *Id*. at 872. Yet, DOC moved for discretionary review of both Court of Appeal's holdings.

D. SUPPLEMENTAL ARGUMENT

1. **DOSA revocation must be supported by verified facts and accurate knowledge.**

a. As DOC concedes, it bears the burden to prove a basis to revoke a DOSA sentence by a preponderance of the evidence.

It is undisputed that the basis for revoking a DOSA sentence must be proved by a preponderance of the evidence. *In re Pers. Restraint of McKay*, 127 Wn. App. 165, 170, 110 P.3d 856 (2005); WAC 137-24-030(10) (DOC must prove each allegation of a violation by a preponderance of the evidence). The preponderance standard ensures "DOSA revocations are founded upon verified facts and accurate knowledge." *McKay*, 127 Wn. App. at 170.

When a DOSA is revoked, the individual loses the opportunity to serve half the sentence in the community; in Mr. Schley's case, this was 29.75 months. The individual is also deprived of access to chemical

dependency treatment throughout the sentence. The preponderance standard protects an individual from an unjustified grievous loss of these liberty interests. *Morrissey*, 408 U.S. at 482; *see State v. Dahl*, 139 Wn.2d 678, 683, 990 P.2d 396 (1999) (same due process protections apply to individual facing revocation of a suspended sentence). Likewise, the heightened burden protects society's interest in treating substance abuse. *McKay*, 127 Wn. App. at 170 (quoting *Morrissey*, 408 U.S. at 484).

Due to the liberty interest at stake, the Court of Appeals correctly applied the preponderance standard in this case. *Schley*, 197 Wn. App. at 869-70.

DOC agrees the preponderance standard applies. Resp. of DOC, No. 73872-1-I, p.6 (filed Jul. 6, 2016). It made the same concession in *McKay*, 127 Wn. App. at 168-69 ("The State concedes that the serious nature of a proceeding resulting in revocation of a DOSA sentence requires a preponderance of the evidence standard of proof.").

The regulations, case law, and DOC's concession are consistent with other jurisdictions.[2]

[2] Ark. Code Ann. § 16-93-308(d) (2017) (violation of condition of suspension of sentence or probation must be proved by a preponderance of the evidence); 120 Mass. Code Regs. 303.24(e) (2017) (same for violation of condition of parole); Minn. R. Crim. P. 27.04 subd. 2(1)(c) (2017) (probation violation subject to clear and convincing evidence); *People v. Quarterman*, 136 Cal. Rptr. 3d 419, 427 (Cal. Ct. App. 2012) (probation violation subject to a preponderance of the evidence); *Barker v. Commonwealth*, 379 S.W.3d 116, 123 (Ky. 2012) (same); *State v. LaPlaca*, 27 A.3d 719, 723 (N.H. 2011) (violation of conditions of suspended sentence must be proved by a

b. A preponderance of the evidence requires more than simply any evidence; it depends upon a showing that is more probable than not.

A preponderance of the evidence requires a showing that is more probable than not. *Kennedy v. Southern California Edison Co.*, 268 F.3d 763, 770 (9th Cir. 2001). A preponderance finding must be supported by "verified facts . . . and accurate knowledge." *Morrissey*, 408 U.S. at 484.

In contrast, the "some evidence" standard permits findings that are supported by "any evidence in the record." *McKay*, 127 Wn. App. at 169 (emphasis in original). If there is a scintilla of evidence to support it, a "some evidence" finding may be made. *See State v. Trujillo*, 75 Wn. App. 913, 917, 883 P.2d 329 (1994) (likening some evidence to "a mere scintilla of evidence"). In other words, a mere allegation is enough. When only prison safety and discipline are at stake, DOC may constitutionally rely on the minimal some evidence standard. *In re Pers. Restraint of Grantham*, 168 Wn.2d 204, 215-16, 227 P.3d 285 (2010).

However, due process requires more than just any evidence in the record to revoke a DOSA sentence. Due process requires that the evidence render the underlying events more likely than not to actually exist before

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preponderance); *Brooks v. State*, 153 S.W.3d 124, 126 (Tex. Ct. App. 2004) (at revocation proceeding, alleged violations must be proved by a preponderance); *Dalton v. State*, 560 N.E.2d 558, 560 (Ind. Ct. App. 1990) (same); *United States v. Hilger*, 728 F.3d 947, 949-50 (9th Cir. 2013) (government must prove violation of condition of release by a preponderance of the evidence).

DOC revokes 29.75 months of community custody and almost twice as much substance abuse treatment. *McKay*, 127 Wn. App. at 170; *see Morrissey*, 408 U.S. at 481-84; RP 7 (hearing officer indicates preponderance standard applies).

2. **Because DOC functionally revoked Mr. Schley's DOSA once a scintilla of evidence established a fighting infraction, the DOSA revocation hearing did not resolve any genuine issue of fact by a preponderance of the evidence.**

The fighting allegation provided the basis to revoke Mr. Schley's DOSA, but it was never proved beyond "some evidence." The revocation hearing officer found that the allegation was supported by "some evidence"; that finding was affirmed on appeal under the "some evidence" standard; it led to automatic termination from chemical dependency treatment, and DOC thereby claimed, "there's where they have met the preponderance standard." RP 33-35. But confirming a conclusion proved by some evidence does not turn it into a preponderance of the evidence. A "some evidence" finding cannot, without testing or proof, transform into findings by a preponderance of the evidence.

In *McKay*, the petitioner's DOSA sentence was revoked during a hearing in which the Court found some evidence showed McKay had committed two infractions: failing to participate in chemical dependency treatment and causing an innocent person to be penalized or proceeded

against by lying. 127 Wn. App. at 167. The hearing officer applied the some evidence standard to the infractions and, "[c]ommenting that 'McKay is inappropriate for the DOSA sentencing,' the hearing officer revoked McKay's DOSA sentence." *Id*. at 167-68. The Court of Appeals reversed, holding that a proceeding that could result in revocation of a DOSA sentence must be subject to the preponderance of the evidence. 127 Wn. App. at 168-70. The same rule applies here.

a. DOC never proved the factual basis for revoking Mr. Schley's DOSA by a preponderance of the evidence

DOC never proved by a preponderance of the evidence the allegation that Mr. Schley's violence required termination of his DOSA. Rather, revocation was a foregone conclusion after a hearing officer found Mr. Schley committed a fighting infraction by some evidence. App. 27; *see* App. 36 (noting some evidence standard was applied at infraction hearing). The some evidence finding—alone—supported administrative termination due to DOC's zero-tolerance for violence policy. App. 29; RP 10-13. Then, administrative termination required the DOSA to be revoked. App. 30-41; RP 22-23, 33-35. Only the infraction hearing involved a genuine question of fact, which DOC proved by a scintilla of evidence.

The DOSA revocation hearing officer "asked Mr. Schley if he understood that the major infraction #505 was not the matter at hand for

this current [DOSA revocation] hearing process and that the evidence presented during the major infraction hearing concerning the #505 could not be in essence re-heard today." App. 37; *accord* RP 6-7. "I can do absolutely nothing about the mere fact that you were found guilty by another hearing officer and your appeal was upheld. . . . I can't do anything with that." RP 20-21. As Mr. Schley tried to explain, he was not asking the hearing officer to overturn the infraction. RP 21-23, 32. The hearing officer merely needed to assess, for purposes of the alleged DOSA revocation, whether he actually committed violence by a preponderance of the evidence, weighing DOC's confidential informants against Mr. Schley's five witness statements and evidence. RP 21-25, 32.

The hearing officer instead only noted that the infraction was found by some evidence, upheld on appeal, and caused the termination from treatment, which she then found occurred by a preponderance of the evidence. RP 33-35. As she summarized, the established fact of the infraction was the "most significant witness testimony and evidence presented at the [revocation] hearing." App. 38.

The DOC Appeals Panel decision demonstrates the cascade of events: "because [some evidence showed Mr. Schley] violated a mandatory treatment program requirement and [he was] terminated from [his] chemical dependency treatment program, the Hearing Officer had no

other option but to revoke your DOSA sentence." App. 54 (emphasis added); *see* App. 60 (Risk Management Director's decision); RP 11-13 (DOC argues for revocation based on fighting infraction that caused termination from treatment).

DOC justifies the process by claiming the "some evidence" finding turned into a preponderance through attenuation and repetition. But a finding to a lesser standard of proof can never substitute for a finding that must be supported by greater evidence. For example, because of the difference in burdens of proof, an acquittal in a criminal case does not constitute an adjudication on the preponderance-of-the-evidence burden applicable in civil proceedings. *One Lot Emerald Cut Stones v. United States*, 409 U.S. 232, 235, 93 S. Ct. 489, 34 L. Ed. 2d 438 (1971). Likewise, collateral estoppel does not apply when the burdens of proof are distinct. *E.g., Thompson v. State, Dep't of Licensing*, 138 Wn.2d 783, 795-96, 982 P.2d 601 (1999).

Only the opposite is true: a finding made to a higher standard can be substituted where a finding to a lesser standard is required. Criminal sentencing provides an example. A conviction proved beyond a reasonable doubt (a higher standard) can be used in a sentencing proceeding where the standard is a preponderance of the evidence (a lower standard). *State v. Ammons*, 105 Wn.2d 175, 187-88, 713 P.2d 719 (1986).

b. DOC's sham procedure is not authorized by statute.

DOC incorrectly claims its lack of process is supported by RCW 9.94A.662(3). Mot. for Discr. Review at 11. That statute provides, "An offender who fails to complete the program or who is administratively terminated from the program shall be reclassified to serve the unexpired term of his or her sentence as ordered by the sentencing court." RCW 9.94A.662(3). Nothing in the statute suggests the legislature intended for DOC to administratively terminate an inmate from chemical dependency treatment for any reason by any standard of proof. The statute should be read in harmony with the constitutional due process protections set forth above, which it cannot override. *E.g.*, *Tunstall v. Bergeson*, 141 Wn.2d 201, 220-21, 5 P.3d 691 (2000). An inmate may have his DOSA revoked only upon compliance with due process, including proof of the basis for revocation by a preponderance of the evidence.

DOC must comply with due process in its implementing regulations and policy. Doing so is not complex. For example, clinical staff could suspend an inmate from treatment pending a hearing on the underlying issue—e.g., fighting—that complies with due process. Alternatively, DOC could hold a single hearing to determine the disciplinary infraction and the DOSA revocation at which DOC complies with the more stringent due process standards for revocation. *See Schley*,

197 Wn. App. at 870 ("Given the inevitability [that the infraction would lead to revocation of the DOSA], there is minimal additional burden on [DOC] to apply the appropriate burden of proof at the initial infraction hearing.").

c. DOC's failure to apply the heightened standard of proof matters on these facts.

Application of the more rigorous preponderance of the evidence standard is material. The fighting allegation was contested. DOC relied on confidential informants to support its case, only one of whom claimed firsthand knowledge of a fight. App. 27; RP 16. Mr. Schley, appearing without counsel, presented five contrary witness statements and evidence supporting an alternative source for the scratch on his back. App. 27; RP 15-16, 18-19. While a scintilla of evidence may suggest that Mr. Schley engaged in fighting, insufficient evidence supports such a finding under a more probable than not standard.

A comparable example illustrates the deficiency. Imagine Mr. Schley had been administratively terminated from treatment without reason. Under DOC's position, a DOSA revocation hearing officer would have to accept the baseless administrative termination and simply find that the baseless termination occurred by a preponderance of the evidence. However, for due process to have any teeth, more must be required. The

hearing officer would have to examine whether the termination from treatment was supported by a preponderance of the evidence to satisfy due process. The same is true here; the basis for the revocation must be supported by a preponderance of the evidence.

Revocation of a DOSA results in serious consequences: the individual remains confined for the entire length of his sentence and he receives no substance abuse treatment. An individual has "a significant liberty interest in the expectation of community custody as opposed to incarceration, including the ability to be with family and friends, be employed or attend school, and live a relatively normal life." *In re Pers. Restraint of McNeal*, 99 Wn. App. 617, 632-33, 994 P.2d 890 (2000); *accord Young v. Harper*, 520 U.S. 143, 147-48, 117 S. Ct. 1148, 137 L. Ed. 2d 270 (1997) (persons have similar interests, and due process rights, regardless of what State calls conditional release). Society also "has a stake in whatever may be the chance of restoring [the individual] to normal and useful life within the law" and in fairly adhering to revocation procedures "to enhance the chance of rehabilitation by avoiding reactions to arbitrariness." *Morrissey*, 408 U.S. at 484. In fact, both the individual and DOC "have interests in the accurate finding of fact and the informed use of discretion" to insure liberty is not unjustifiably deprived and rehabilitation is not unnecessarily interrupted. *Scarpelli*, 411 U.S. at 785.

Because of the important interests at stake, DOSA revocation proceedings compel stronger due process guarantees than prison discipline or safety. *See McNeal*, 99 Wn. App. at 625-26 (holding community custody revocation proceedings require greater process than prison disciplinary proceedings). Conditional liberty "includes many of the core values of unqualified liberty and its termination inflicts a 'grievous loss' on the parolee and often on others." *Morrissey*, 408 U.S. at 480, 482. "Simply put, revocation proceedings determine whether the parolee will be free or in prison, a matter of obvious great moment to him." *Wolff v. McDonnell*, 418 U.S. 539, 560, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974). Prison disciplinary proceedings, on the other hand, must account for the need to maintain an acceptable level of security within the institution and, further, only result in the deprivation of good time or a temporary disciplinary measure. *Id*. at 561-63.

Because, by any measure, a grievous liberty interest is at stake for the inmate and others, the concepts of grace or privilege, emphasized in DOC's motion for discretionary review, are immaterial. *Morrissey*, 408 U.S. at 482 ("It is hardly useful any longer to try to deal with this problem in terms of whether the parolee's liberty is a 'right' or a 'privilege.' By whatever name, the liberty is valuable and must be seen as within the protection of the Fourteenth Amendment."); *Scarpelli*, 411 U.S. at 782 n.4

("[A] probationer can no longer be denied due process, in reliance on the dictum that probation is an 'act of grace.'" (internal citation omitted)).

Accordingly, revocation of conditional liberty requires greater process than prison disciplinary proceedings. The "argument cannot even be made here that summary treatment is necessary [for revocation] as it may be with respect to controlling a large group of potentially disruptive prisoners in actual custody." *Morrissey*, 408 U.S. at 483.

No reviewer ever determined it was more probable than not that Mr. Schley engaged in fighting. They found only some evidence showed he engaged in fighting. Due process requires more protection before 29.75 months could be added to Mr. Schley's incarceration.

3. **The case does not involve prison discipline or safety; it concerns the loss of access to treatment and the revocation of conditional release into the community.**

Because prison discipline proceedings constitutionally require less process than revocation proceedings, the State's reliance on *Gronquist* is unavailing. In *Gronquist*, this Court considered the procedures required during a prison discipline hearing for a serious infraction. *In re Pers. Restraint of Gronquist*, 138 Wn.2d 388, 978 P.2d 1083 (1999). This case concerns categorically distinct due process concerns from *Gronquist*. Gronquist faced 10 days of lost good time and 5 days of segregation for

prison discipline violations (infractions). *Id*. at 394-95, 397-98. At issue here is the revocation of a DOSA sentence, whereby Mr. Schley was denied 29.75 months in the community and access to substance abuse treatment. Moreover, *Gronquist* is inapposite because the challenged proceedings were subject to the same standard of proof, as each involved prison infractions. *Id*. at 401. Here, the serious infraction for disciplinary purposes was subject to a lesser burden than the DOSA revocation.

DOC likewise inaptly relies upon *State v. McCormick*, 166 Wn.2d 689, 213 P.3d 32 (2009). That case concerns the required mens rea for violation of a term of community custody imposed pursuant to a sex offender alternative sentence. *Id*. at 697, 699-705. *McCormick* does not discuss DOC proceedings, the burden of proof, or the bootstrapping of a prior finding resting on a lesser burden to a subsequent determination requiring a higher standard of proof.

4. **As DOC concedes it would do on remand here, DOC must afford the right to counsel on a case-by-case basis in revocation hearings.**

A separate due process violation occurred when DOC failed to inform Mr. Schley of his right to request counsel. Due process sets forth a clear duty to consider the right to counsel on a case-by-case basis in revocation hearings. *Scarpelli*, 411 U.S. at 790-91; *Grisby*, 190 Wn. App. at 796-97. In every case, the inmate must receive notice of the right to

request counsel, fair consideration of the request, and a recorded statement of the grounds for refusal, where counsel is denied. *Id*.

DOC neglected its duty by informing Mr. Schley he did not have a right to counsel and by failing to analyze the case to determine whether he was entitled to counsel. App. 32; *Grisby*, 190 Wn. App. at 805-06; *Scarpelli*, 411 U.S. at 790. At oral argument below, DOC conceded it would provide notice of the right to counsel on remand. *Schley*, 197 Wn. App. at 872.

DOC has a systemic history of denying counsel. Br. of Amici Curiae the Defender Initiative and Columbia Legal Services, No. 73872-1-I, pp.7-9, 13-15 (filed Sept. 27, 2016). Its casting of the issue here as "not complex" depends upon its parochial view of the revocation hearing as the simple affirming of foregone conclusions.

A properly conducted revocation hearing would trigger the right to counsel. Mr. Schley contested the allegation that he engaged in fighting. *See Scarpelli*, 411 U.S. at 790 (counsel should be provided if there is a colorable claim that alleged violation had not been committed). DOC and Mr. Schley relied on opposing witnesses who should have been subject to examination. *See McNeal*, 99 Wn. App. at 637-38 (disputed facts compel appointment of counsel). An attorney also could have compiled and

presented information mitigating the need for revocation. *Scarpelli*, 411 U.S. at 790 (counsel can assist with mitigation evidence and argument).

DOC violated its constitutionally-mandated duties when it failed to consider whether Mr. Schley was entitled to counsel and failed to inform Mr. Schley he had the right to request counsel. The revocation should be reversed on this independent basis.

E. CONCLUSION

Revocation of a DOSA sentence results in a grievous loss of liberty. Due process therefore necessitates proof beyond fifty percent. That preponderance burden is not satisfied by the substantially lower some evidence standard. One percent does not transform into more likely than not. The Court should reverse and remand for a hearing that complies with due process.

DATED this 31st day of October, 2017.

Respectfully submitted,

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