

No. ____ - ____

IN THE
SUPREME COURT OF THE UNITED STATES

PATRICK RANDELL McINTOSH,
Petitioner,
v.

UNITED STATES OF AMERICA
Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

WILLIAM A. MORRISON
Attorney for Petitioner
GA State Bar No. 525186
The Morrison Firm
50 Hurt Plaza
Suite 1110
Atlanta, GA 30303
(470) 444-9533
bill@themorrisonfirm.com

QUESTION PRESENTED

- I. Does a severe personality disorder constitute a mental disease or defect under 18 U.S.C. § 4243(c)(d) civil commitment provision?

PARTIES TO THE PROCEEDING

The parties to the proceeding in the United States Court of Appeals for the Eleventh Circuit were Petitioner Patrick McIntosh and Respondent United States of America.

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Patrick Randell McIntosh petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

**OPINION OF THE UNITED STATES COURT
OF APPEALS FOR THE ELEVENTH CIRCUIT**

The opinion of the United States Court of Appeals for the Eleventh Circuit is attached as Appendix A.

JURISDICTION

The Eleventh Circuit Court of Appeals affirmed McIntosh's conviction and sentence on August 20th 2018. Jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Title 18 § 4243(d) states:

In a hearing pursuant to subsection (c) of the section. a person found not guilty only by reason of insanity of an offense involving bodily injury to, or serious damage to the property of another person, or involving a substantial risk of such injury or damage, has the burden of proving by clear and convincing evidence that his release would not create a substantial risk of bodily injury to another person or serious damage to property of another due to a present mental disease or defect (emphasis added).

STATEMENT OF THE CASE

Petitioner was found not guilty by reason of insanity on charges of threatening the life of the President of the United States, threatening federal law enforcement officers, and making threats by interstate communications. In a bench trial, the District Court, pursuant to 18 U.S.C. § 4243 committed McIntosh to a mental health facility within the Bureau of Prisons finding that McIntosh had not carried his burden by clear and convincing evidence that he did not present a danger to others or the community based on a mental disease or defect.

On appeal, McIntosh argued that he should not have been committed because his dangerousness was not caused by a mental disease or defect as recognized by the medical community. The Eleventh Circuit, agreeing with all other Circuits concluded that a serious personality disorder was sufficient to civilly commit an individual who

was found to be dangerous notwithstanding the medical communities' disagreement with that standard.

REASONS FOR GRANTING THE WRIT

The Petitioner in this case has been deprived of his liberty based upon a spectacularly broad interpretation of a statute going far, far beyond the actual meaning of the terms used. It is not an exaggeration to say that the Eleventh Circuit Court of Appeals and all of the other Circuits which have construed the civil commitment statute, which specifically requires that the defendant's dangerousness be based upon a serious mental disease or defect, to include a severe personality disorder, although perhaps laudable, is an unwarranted and unsupported expansion of the meaning of the words.

A risk assessment report was prepared in this case as is required by the statute. The report itself, as pointed out by the petitioner in the lower court, notes the tension between what the statute says and what Courts have interpreted it to mean.

This case warrants review by this Court because it will present an excellent opportunity for this Court to clarify whether or not the plain meaning of words as they are used in the medical community are to be ignored when they are used in a legal context which results in the jailing of a citizen.

ARGUMENT AND AUTHORITY

District Court's should not embrace statutory interpretations which expand a statutes reach beyond the plain meaning of the terms. See *McDonald v. United*

States, 312 F.2d 847, 851 (D.C. Cir. 1962); *United States v. Murdoch*, 98 F.3d 472, 475 (9th Cir. 1996); *Gov't of V.I. v. Fredericks*, 578 F.2d 927, 932 (3d Cir. 1978); *United States v. Weed*, 389 F.3d 1060, 1072 (10th Cir. 2004); and *United States v. Lyons*, 731 F.2d 243, 246 (5th Cir. 1984).

The risk assessment report in this case noted that:

“If his symptoms are attributable to his personality disorder, which is our opinion, and if this personality disorder is construed by the Court to be a mental disease, then Mr. McIntosh poses a significant risk of danger to others in accordance with the statute. However, if the Court determines that his symptoms are attributable to his personality disorder but does not construe that disorder to be a mental disease or defect, then for the statute his risk of danger is due to other factors than a mental disease and he does not meet criteria for commitment.”

The risk assessment goes on to state that:

“Further, we are of the opinion that his personality pathology contributes to his risk but note that personality disorders are not typically construed as mental disease for commitment purposes pursuant to Title 18 U.S.C. § 4243.”

Stated in a statutorily correct way, if the Court adheres to the statute, as written, the petitioner is not to be committed.¹

CONCLUSION

The Eleventh Circuit’s interpretation of the statute does not adhere to the text of the statute pure and simple. Opinions which do not hear to the text of a statute should be disfavored and certainly, a person’s liberty should not lie in the balance.

¹ “Textualism begins and ends with what the text says and fairly implies.” See Antonin Scalia & Bryan A. Garner, *Reading Law: The interpretation of Legal Texts* 16 (2012).

Petitioner respectfully requests that this Court grant his petition for a Writ of Certiorari and to reverse the Eleventh Circuit Court of Appeals.

Respectfully submitted,

William A. Morrison

William A. Morrison
GA State Bar. No. 525186
Attorney for Petitioner