No. _____

In the Supreme Court of the United States

SPRING TERM 2019

Luis A Serna,

Petitioner,

v.

Hennepin County

Respondent.

On Petition for Writ of Certiorari to the United States Supreme Court

PETITION FOR WRIT OF CERTIORARI

Luis A. Serna
Petitioner/ *Pro se*
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Moose Lake, MN. 55767

QUESTION PRESENTED

Petitioner Luis A. Serna filed a 42 U.S.C. § 1983 civil rights complaint in the Federal District Court of Minnesota. On January 23 , 2018 the Magistrate recommended dismissal without prejudice citing *Heck v Humphrey,* 512 U.S. 477 (1994). "Because judgment in Serna's favor would necessarily imply the invalidity of his commitment, *Heck* applies to bar his claim. Serna v Hennepin County; 17-5221 (PAM/LIB) [Doc. C] On March 23, 2018 the District Court upheld the Magistrate's Recommendation [Doc. B]

[And] the Eighth Circuit Court of Appeals in Serna v Hennepin County 18-1804 dated October 25, 2018 denied review this case. [Doc. A]

The question presented: Is the "Petitioner" entitled to [a] defense of [the] "presumption of innocence" upon a State's assertion of "future dangerous behavior " via pure "speculation"; as a violation of the 5th and 14th Amendment[s] of Due Process standard, fundamentally violate this Court's opinion developed under *Foucha v Louisiana* 504 US 71 (1992) and/or *Kingsley v Hendrickson et.al.,* 576 US ___, (2015)?

PARTIES TO THE PROCEEDING

Petitioner Luis A. Serna was Plaintiff in the District Court and Appellant in the Eighth Circuit Court of Appeals.

Respondent was the Defendant County of Hennepin of the State of Minnesota, a District of the Federal Court and did not file a reply in the Eighth Circuit. The Order was summarily entered against Petitioner by the Appellate Court.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Luis A. Serna respectfully petition for a writ of certiorari to the United States Court of Appeal for the Eighth Circuit in *Luis A. Serna* 18-1804. [Doc. A]

DECISIONS BELOW

The decision of the United States Court of Appeals for the Eighth Circuit is unreported. The filing Number is 18-1804; summarily denied review October 25, 2018 . [Appendix A] The District Court of Minnesota summary dismissals. [Appendix B and C]

JURISDICTIONAL STATEMENT

The judgment and opinion of the United States Court of Appeal for the Eighth Circuit was entered on October 25, 2018 [Pet. App. A] This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1) and Supreme Court Rule 10 (c) because the lower courts decisions conflicts with this court's *Foucha v Louisiana* 504 US 71 (1992) ;as well as, the Minnesota State Court Decision[s] of *Jarvis v Levine* 418 N.W.2d 139 (Minn. 1988); *Johnson v Noot, et. al.* 323 N.W.2d 724 (Minn. 1982); *Lidberg v Steffen* 492 N.W.2d 560 (Minn. App. 1992), *Reome v Levine* 350 N.W.2d 428 (Minn. App. 1984).

CONSITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

The 5th and 14th Amendment Due Process Clauses; and Equal Protection in statutory rights as mentally ill and dangerous Minn. Stat. §253B.02[1]

United States Constitution 5th Amendment:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution 14th Amendment Section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

INTRODUCTION

This case involves the scope and strength of bedrock constitutional principle that "[f]reedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause[.]" *Foucha v. Louisiana,* 504 U.S. 71, 80 (1992). *See also Zadvydas v. Davis,* 533 U.S. 678, 690 (2001) (stating that "[a] statute permitting

[1] **Subd. 18c.** Sexually dangerous person.
(a) A "sexually dangerous person" means a person who:
(1) has engaged in a course of harmful sexual conduct as defined in subdivision 7a;
(2) has manifested a sexual, personality, or other mental disorder or dysfunction; and
(3) as a result, is likely to engage in acts of harmful sexual conduct as defined in subdivision 7a.
(b) For purposes of this provision, it is not necessary to prove that the person has an inability to control the person's sexual impulses.

indefinite detention" raises serious constitutional problems, because "[f]reedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty that Clause protects.") (citation omitted). The construction is supported upon bedrock Constitutional expectations that one is "innocent until proven guilty" beyond a reasonable doubt, or the lesser "clear and convincing evidence" standards. In the instance, Respondent Hennepin County has removed indefinitely Petitioner's liberty upon pure speculation of some "unconsummated future crime" , not for current or a past criminal conviction.

STATEMENT OF THE CASE

Petitioner Luis A. Serna was civilly committed as an alleged Sexually Dangerous Person (Minn. Stat. 253B.185 2000) [2] in Final Order dated January 19, 2001.

As subject to the terms of Petitioner commitment, he is entitled to all the rights and procedures as those applied to the 'Mentally Ill and Dangerous'. Minn. Stat, 253B.185 (2000).

At the time Petitioner Serna was entitled to his liberty from prison confinement Respondent Hennepin County petitioned in Hennepin County Probate Court and successfully indefinitely committed. Petitioner Serna's commitment is wrongfully premised 'narrowly' upon speculation of some unpredictable "future crime" which appears to be supported by the opinion[s] of the Minnesota Supreme Court, Justices' WAHL; KEITH; TOMLJANOVICH in their dissent . [See: In re Blodgett 510 N.W.2d 910,

[2] **253B.185**. Subdivision 1. Commitment generally.
(a) Except as otherwise provided in this section, the provisions of this chapter pertaining to persons who are mentally ill and dangerous to the public apply with like force and effect to persons who are alleged or found to be sexually dangerous persons or persons with a sexual psychopathic personality.

918 (1994)[3]]. The dissenting opinions supports Petitioner's cause of action for relief, thereby stating a claim. The lower courts' summary dismissals demonstrates they totally ignored Petitioner's factual claim for relief.

The Petitioner having raised [as Justice Kavanaugh argued during his confirmation hearings] [that] he is entitled to the *presumption of innocence* for allegation[s] of alleged future sexual misconduct.

The Petitioner argued for relief In the lower courts, that he is entitled to the defense of [a] "presumption of innocence" for alleged "future dangerous behavior " by mere speculation for the indefinite civil commitment/imprisonment. In support See: *Foucha v Louisiana* 504 US 71 (1992)[4] . [Also see: *Jarvis v Levine* 418 N.W.2d 139 (Minn. 1988); *Johnson v Noot, et. al.* 323 N.W.2d 724 (Minn. 1982),); *Lidberg v Steffen* 492 N.W.2d 560 (Minn. App. 1992).]

The Petitioner sought relief by 42 U.S.C. 1983 civil right complaint seeking declaratory judgment as his cause of action. The district and appellate court[s] in summary dismissal.

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[3] Dissent by: WAHL; KEITH; TOMLJANOVICH WAHL, Justice (dissenting). I respectfully dissent.
The Minnesota Psychopathic Personality Statutes, Minn. Stat. 526.09-.10, under which a person, **who may in the future commit acts of sexual misconduct** dangerous to others, may be involuntarily committed, without the requirement of a finding that the person suffers from a medically diagnosable and treatable mental illness, to a confinement of indefinite duration until the person proves he is no longer dangerous to the public and no longer in need of inpatient treatment, in my view, violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution. Furthermore, the rigor and methodical efficiency with which the Psychopathic Personality Statute is presently being enforced is creating a system of wholesale preventive detention, a concept foreign to our jurisprudence.

[4] See: 29 Am J2d Ev 225, 226. "A presumption which applies, not only in criminal cases, but in civil cases where the commission of a crime is in issue." In the instant case, [the] "alleged future crime is in issue." There also is a presumption, one is not mentally ill and dangerous."

Magistrate Judge recommended dismissal was improper." (*See* Magistrate Order Doc.C.) The District Court Order summarily adopted the Report and Recommendation. (See: Doc. B).

The Federal District Court and Eighth Circuit Appeals Court summary denials' grants the Right to this Petition for Certiorari. It is time for this Court to settle this Constitutional conundrum.

BASIS FOR FEDERAL JURISDICTION

This case raises important questions of interpretation of Due Process secured by the 5th and 14th Amendments' of the United States Constitution, involving the 'Right to [the] presumption of innocence' for an indefinite civil commitment, constructed solely upon non-behavioral allegations of "future criminal misconduct" for confinement, is a violation of this Court's opinion stated in Foucha v. Louisiana 504 US 71 (1992). The district court further had jurisdiction under the general federal question jurisdiction conferred by 28 U.S.C. § 1331.

ARGUMENT IN SUPPORT OF GRANTING CERTIORARI

A. PETITIONER'S CIVIL COMMITMENT CONFLICTS WITH THIS COURT'S OPINION OF FOUCHA V LOUISANA 504 US 71 (1992) AND MINNESOTA SUPREME AND APPELLATE COURT'S OPINION OF *JARVIS V LEVINE* 418 N.W.2D 139 (MINN. 1988); *JOHNSON V NOOT, ET. AL.* 323 N.W.2D 724 (MINN. 1982) AND *REOME V LEVINE* 350 N.W.2d 428 (MINN. APP. 1984).

In each of the above cases, the courts' clearly opined an individual cannot be civilly committed, nor continued to be committed, solely upon the basis of future criminal misconduct . Petitioner is diagnosed with antisocial personality, which is not a mental illness and for which no treatment effectuates. *Foucha v Louisana* 504 U.S. 71; *Reome v Levine* 350 N.W.2d 428 (Minn. App. 1984). "That appellant is apt to be involved in

criminal-type behavior in the future, but is not deemed dangerous as a result of mental illness." Id.

B. IMPORTANCE OF THE QUESTION PRESENTED.

This case presents an important fundamental question to the interpretation of this Court's decision[s] of *Foucha v Louisana* 504 U.S. 71 (1992); *Kansas v Hendricks* 521 US 346 (1997) and *Kansas v Crane* 534 U.S. 407 (2001).

The question presented is of great public importance, because it affects the civil commitment of individual[s] who have fully served their prison sentences. Who are thereafter indefinitely confined under civil commitment, "not for their past behavior—but for alleged future behavior."

Governmental conduct, that subsequently denies *Them*, due process and equal protection of the United States Constitution as the 'presumption of innocence'. This standard has created a lower bar in removing one's liberty from guilt of 'beyond a reasonable doubt' to guilty without proof of any wrong doing as claimed to be for alleged future behavior that has not yet transpired. Science fiction's *Minority Report* has now become reality.

REASONS FOR GRANTING THE PETITION

I. The District Court and the Eighth Circuit's Ruling Conflicts With This Court's Fundamental Rights Jurisprudence And Bedrock Principles of Constitutional Law.

D. The Decision Below Undervalues The Right To Be Free From Massive Deprivations of Physical Liberty.

"[A]s a matter of due process," civil confinement is only permissible [if a rational basis for the commitment exists..." *Foucha*, 504 U.S. at 77 (citing *O'Connor v. Donaldson*, 422

U.S. 563,575 (1975))]. It is at this stage; the Petitioner's commitment fails to meet the Court's precedence's or due process standards of *Foucha.*

The reason is because Petitioner is confined, not for what he has done, but for some alleged future conduct that has not occurred. This is governmental conduct that is practiced in third world or dictatorial regimes. Proceedings that are corrupt and constructed upon fraud., where the individual is denied truth. There is no scientific basis that anyone can predict the future with such accuracy, such sureness, to meet the standard of "clear and convincing evidence", let alone, "beyond a reasonable doubt." Why??? Because there has been no prosecutable behavior to base the commitment upon.

The confinement is based upon 'mere' hypotheticals of claimed future conduct, that simply has not occurred. That is the foundation of this Court's *Foucha* decision. [That] the state may not convict and imprison, when there is no evidence of a current dangerous sexual crime necessities a mental diagnosis. The fact that Petitioner was found rational in sentences of imprisonment for his past crimes, concludes that he was not mental ill at the time the crime was committed.

No, the State to get around due process, claimed at the time Petitioner was entitled to his liberty, continued confinement for future criminal conduct that has simply not occurred.

E. The District Court and the Eighth Circuit erred in judgment.

The Magistrate recommended a summary dismissal of Petitioner's 42 U.S.C § 1983 civil right complaint because: Serna alleges that his continuing detention at the MSOP is unlawful because it is premised on his threat of future dangerousness and therefore violates his due-process right to the presumption of innocence." citing *Heck v Humphrey,* 512 U.S. 477 (1994) and upheld by the District Court.

Unfortunately, *Heck* involved a Habeas Corpus action, not a civil complaint. Furthermore, the District and Eighth Circuit Court in *Karsjen, et al. v Jesson, et al.* D.C. file no. 11-3659 (DWF/JJK) and Eighth Cir. No. 15-3485.

HECK V HUMPHREY IS NOT ABSOLUTE.

The lower courts' dismissal rests upon this Court's *Heck* decision. Petitioner argues *Heck* is not controlling.

Because, the Heck decision as opined by the lower court[s] indicates [that] " should Plaintiff/Appellant prevail on his claim. " citing Heck v. Humphrey, 512 U.S. 477, 486–87, 114 S. Ct. 2364, 2372, 129 L. Ed. 2d 383, 394 (1994) (holding that § 1983 suits are not available if the outcome of the suit would imply that a prisoner's conviction or sentence is invalid, unless he proves that his conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such a determination, or called into question by a federal court's issuance of a writ of habeas corpus); concluding Plaintiff cannot challenge constitutional violations using a 1983 civil complaint, before prevailing by habeas corpus.

Here it is firmly apparent Petitioner raised a cause of action for relief, but was denied his Constitutional Right to litigate it.

Regardless this action however, would not necessarily imply the invalidity of the plaintiff's commitment. See Huftilev. Miccio-Fonseca, 410 F.3d 1136, 1140 (9th Cir. 2005) (noting Heck applies to civilly committed persons as well as prisoners). Petitioner does not allege that the initial commitment was invalid. Nor is it alleged that he should be immediately released. Instead, the Petitioner's claim is that he should receive a finding of the Court as to the merits of his cause of action concerning the Due Process "presumption of innocence" under 42 U.S.C. § 1983. It is conceivable

that upon receiving a favorable finding, the petitioner may be eligible in the future for release. This case has not reached that point.

Clearly, *speculation* alone is not enough to invoke *Heck* and Petitioner has stated a claim [if true] for declaratory, injunctive, and monetary judgments, that leaves release for another day. "[Confinement] for a status is particularly obnoxious, and in many instances can reasonably be called cruel and unusual , because it involves [confinement] for a mere propensity, a desire to commit an offense." *Powell v Texas,* 392 US 514 (1968). *Hypotheticals* simply have no evidentiary or Constitutional values to deprive one's liberty. Plaintiff/Appellant's civil confinement for the past 28 years is repugnant to due process of the United States Constitution.

Minnesota statutes provide (2) separate definitions for Mentally ill persons. See: Minn. Stat. 253B.02 subd. 13 [mentally ill] and 17 (1990) [mentally ill and dangerous, says: "(ii) there is a substantial likelihood that the person will engage in acts capable of inflicting serious physical harm on another.."] The dangerousness is predicated upon future conduct, that occurs as the result of the mental infirmity. That is the understanding codified within civil commitment statutes' and requires the *elimination* of a criminal trial and/or sentence, The apparent fact the constitutional protection by that fact, safeguards an unbroken status "of innocence". The offender civilly committed is found 'innocent' by reason of his mental illness. He may not be punished. In the instance, Petitioner has completed his prison sentences and has no pending criminal charges and for these reasons is entitled to a presumption of innocence for some *hypothetical future crime,* when on first blush, the Minnesota Security Hospital determined he has no mental illnesses.

The Eighth Circuit Court's recent precedence of *Karsjens,* has breathed new life because Petitioner need not prevail on habeas corpus, before raising a 42 U.S.C. § 1983 complaint for civil right violations, that may result a later challenge for actual

liberty. In review of the Complaint, Petitioner has not asked for release and *Heck* has no value at this stage of the suit, and Collins [Id.] supports the district court and appellate court erred in summary dismissal and Appellant is entitled to Declaratory Judgment regarding the presumption of innocence for future crimes, that have not occurred. Furthermore, the Court may Order only injunctive relief requiring Minnesota to seek commitment of its' sex offender either before or in place of, criminal sanctions and would not necessarily imply the invalidity of the sex offender's commitment. Therefore this action is not barred under *Heck or Preiser.* This case may in fact, provide a new rule protecting a class of individuals' from a lifetime loss of liberty based upon a [state] invented future crime.

Furthermore, the Supreme Court opined in *Hohn vs. United States* 524 US 236 (1998) [when, as here] "[the] claim of appeal [has] a substantial showing for the arbitrary denial of the constitutional right [i..e. "presumption of innocence"] stipulates a trial on the merits." Due Process is [a] Constitutional right that embraces "[a] presumption of innocence to the indefinite incarceration for an accusation, of a *hypothetical future crime,* meets the necessary substantial showing of [a] Constitutional injury under [a] due process clause violation.

In support of this conclusion: 'Unlike the Bail Reform Act', the discharge criteria here permit the indefinite confinement of persons who have never been charged with a crime. The discharge provision effectively transforms mental hospitals into penal institutions where persons who are not mentally ill are held, not because they committed a crime, but because they might at some future time be involved in criminal behavior. Confinement on this basis bears no rational relation to the purpose for commitment and clearly interferes with rights "implicit in the concept of ordered

liberty." Citing: *Palko v. Connecticut,* 302 U.S. 319, 324-25, 82 L. Ed. 288, 58 S. Ct. 149 (1937); *Reome v Levine* 692 F. Supp. 1046 (D.C. Minn 1988)

The Constitutional error is evident, when liberty is removed simply upon a whim, through a verdict of guilty for a fictitious crime is a real injury and a violation of the United States Constitution Due Process Clause as stipulated by the *Hohn* decision. Plaintiff's confinement bears no rational relation to the purpose for commitment and clearly interferes with rights "implicit in the concept of ordered liberty." Id. *Palko*

In summary, the facts confirm a confinement constructed upon legal fraud, masquerading as a dangerous mental illness or disorder, is a disservice to the people of the United States, the State of Minnesota and Constitution.

The lower courts' summary dismissals substantiates Petitioner stated a claim for relief of an unconstitutional imprisonment and the Constitution requires this matter be settled.

F. IT WAS THE LOWER COURTS' DUTY TO PROVIDE A LEGITIMATE CONSTITUTIONAL EXCEPTION AS TO WHY THE GOVERNMENT MAY IMPRISON A CITIZEN INDEFINITELY FOR FUTURE CONDUCT THAT HAS NOT YET OCCURRED.

The facts plainly illustrate that Petitioner's confinement by the State of Minnesota is not for his past completed criminal sentences. His confinement now is premised for alleged "future behavior". A finding that is as improbable/illogical as one meeting Santa Claus.

This Court in previous opinions of *Pearson v Ramsey Co.* 309 U.S. 270 (1940); *Foucha v Louisana* 504 U.S. 71 (1992); *Kansas v Hendricks* 521 US 346 (1997) and *Kansas v Crane* 534 U.S. 407 (2001) was supported upon real mental illnesses or disorders. In the case of *Pearson* his admittance of possessing an "utter lack of power" to control his sexual urges.

THIS CASE IS AN IDEAL VEHICLE TO DECIDE THE URGENT AND IMPORTANT QUESTION PRESENTED.

The foundational nature of the liberty right a stake, the magnitude of the violation, and the number of people harmed by the violation all point towards the urgency of review in this case. The right to be free from indefinite physical restraint. A wrongful restraint because Petitioner is denied the bed rock Right of a 'presumption of innocence' provided even a criminal offender. Yet, Respondent fails to recognize the substance of this right in defense of a lifetime incarceration for conduct that has not occurred. This Court in *Hendricks v Kansas* 521 US 346 (1997) opined that *Hendricks had* confessed that he had an uncontrollable compulsive disorder around children. See: also *Pearson v Ramsey Co.* 309 U.S. 270 (1940). This Court in *Kansas v Crane* 534 U.S. 407 (2001) opined "...the Federal Constitution required the state to prove that such offenders had serious difficulty in controlling their behavior." [That the offender need not have a "complete" lack of control].

This Court still requires the commitment be premised upon the *mental illness* defined as [a] "compulsive disorder." Actually, it requires more than a compulsive disorder , it must also include the "uncontrollable or difficult if not impossible to control" element. As the evidence suggests, [that] without evidence of the 'uncontrollable compulsive disorder element'.

This court's definition clearly demands the relevant sexual behavior, must not only be enduring but also currently present. Obviously, if the sexual behavior is not habitual, nor has occurred for a number of years, the individual has control of his conduct. As a result, his behavior demands prison confinement, not commitment to a mental health facility. The State cannot have it both ways.

For these reasons, it is appropriate the Court grant Certiorari with counsel appointed.

SUMMARY

The lower courts' erred when it failed to both hear and rule on this case. Petitioner has stated a claim for relief, and has provided proof of fraudulent incarcerations based upon erroneous interpretations of this Court's opinions. It is time to correct this Constitutional abuses. As this Court has opined in the past, "it is unconstitutional to confine someone because they might commit a crime in the future."

Lastly, the fact that Petitioner Serna is indefinitely committed by Respondent County based upon future criminal misconduct in violation of his right to the presumption of innocence. It is clear that The lower Courts' erroneously used a *'subjective standard'* [i.e. shock the conscious] instead of the proper *'objective standard'* [i.e. professional standards] upon which is the reason *they* declared him guilty of a crime, that has not yet been committed, violates this Court's analysis in *Kingsley v Hendrickson et.al.*, 576 US ___, 135 S Ct ___, (2015)

[The] *objective standard* in this case, would have included the presumption of innocence finding Petitioner Serna's confinement Unconstitutional under the 14th Amendment's Due Process Clause, because the evidence shall prove it is punitive.

For these reasons, Petitioner Serna is entitled to the issuance of Certiorari and remand this case back to the District Court for trial on the merits.

Respectfully Submitted,

Dated: ~~11-14-18~~ 1-6-19

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