

No. 18-8686

ORIGINAL

In The
Supreme Court of the United States

JUAN FRANCISCO VEGA,

Petitioner,

.VS.

REBECCA KAPUSTA, Secretary,

FLORIDA DEPARTMENT OF CHILDREN AND
FAMILIES,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
SECOND DISTRICT COURT OF APPEAL OF FLORIDA

PETITION FOR WRIT OF CERTIORARI

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Supreme Court, U.S.
FILED

FEB 25 2019

OFFICE OF THE CLERK

QUESTIONS PRESENTED

THE CRIMINAL JUDGMENTS AND CONVICTIONS
THAT ARE BEING UTILIZED FOR INVOLUNTARY
CIVIL COMMITMENT ARE OVER 20 YEARS OLD AND
THEREFORE BARRED BY THE FLORIDA CIVIL
ACTION STATUTE OF LIMITATIONS.

LIST OF PARTIES

All parties appear in the caption of the case on the
cover page.

All parties do not appear in the caption of the case on
the cover page. A list of all parties to the proceeding in the
court whose judgment is the subject of this petition is as
follows.

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No. _____

In The
Supreme Court of the United States

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a Writ of Certiorari issue to review the judgment below.

OPINION BELOW

[] For cases from federal courts:

The opinion of the United States court of appeals appears at _____ to the petition and is

[] reported at _____; or,

[] has been designated for publication but is not yet reported; or,

[] is unpublished.

The opinion of the United States court appears at _____ to the petition and is

[] reported at _____; or,

[] has been designated for publication but is not yet reported; or,

[] is unpublished.

For cases from state courts:

The opinion of the Second District Court of Appeal appears at Appendix- A to the petition and is

reported at _____; or,

has been designated for publication but is not yet reported; or,

is unpublished.

The opinion of the Twelfth Judicial Circuit Court appears at Appendix-B to the petition and is

reported at _____; or,

has been designated for publication but is not yet reported; or,

is unpublished.

JURISDICTION

For cases from federal courts:

The date on which the United States Court of Appeal decided my case was _____

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was thereafter denied on the following date _____, and a copy of the order denying rehearing appears at _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in application No. ___ A _____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

[V] For cases from state courts:

The date on which the Florida Second District Court of Appeal denied the appeal was February 15, 2019; and the date on which the Twelfth Judicial Circuit Court denied the petition for writ of habeas corpus was June 4, 2018.

A copy of the State Courts decisions appears at Appendix-A & B.

[] A timely petition for rehearing was thereafter denied on the following date _____, and a copy of the order denying rehearing appears at _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in application No. ___ A _____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257 (a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article 1 §§ 2, 9, & 10, Florida Constitution; Article 1 § 10 and Amendment XIV, United States Constitution; and Section 95.11, Florida Statutes.

STATEMENT OF THE CASE

1. On May 5th, 1986, Mr. Vega entered a plea of guilty at the Eleventh Judicial Circuit Court of Miami-Dade and was sentenced in cases F85-032539, F85-032540, F85-032541, and F86-004761 to a total of thirty (30) years in prison for kidnappings and sexual batteries.
2. On July 8, 2009, more than twenty-three (23) years after Mr. Vega's convictions, a Petition to have him Involuntary Civilly Committed as a Sexually Violent Predator was filed by the State Attorney of Miami-Dade founded on the judgments and convictions of case F85-032539, F85-032540, F85-032541, and F86-004761.
3. At the above time, case F08-34057 (based on a DNA "hit"), was open and pending trial, but Mr. Vega was still a sentenced prisoner in the above mentioned cases.

4. The Information in case F08-34057 was filed November 13, 2008, charging Mr. Vega with kidnapping and sexual battery but he complaint about the statute of limitations having expired and, as a result, an Amended Information was filed on March 24, 2009, charging him with armed kidnapping and the sexual battery was dropped.

5. After all sentences on cases F85-032539, F85-032540, F85-032541, and F86-004761 expired, Mr. Vega plead guilty to case F08-34057 and was sentenced to forty-two (42) months in prison with credit for time served — on March 1, 2011.

6. Following the expiration of sentence on case F08-34057 Mr. Vega was transported to the Civil Commitment Center in Arcadia Florida — on March 13, 2011.

7. On March 1, 2011 — when Mr. Vega plead guilty to case F08-34057 — he told the presiding judge, on the record, to dismiss the Petition, relinquish jurisdiction to the criminal division, and to re-file a new Petition, but she

said, "No, I'll just put a detainer on you and send you to prison and bring you back on the *same* Petition." ¹

8. A jury trial on the Petition ended on February 21, 2013, with a 3-3 verdict, meaning that Mr. Vega had to be

¹ The judgment and conviction of case F08-34057 couldn't be utilized in the July 8, 2009, Petition, because Mr. Vega was not convicted on that case *until after* the expiration of sentences on cases F85-032539, F85-032540, F85-032541, and F86-004761.

Moreover, the July 8, 2009, Petition couldn't be amended to include the judgment and conviction of case F08-34057, because Mr. Vega was out of DOC custody on cases F85-032539, F85-032540, F85-032541, and F86-004761 when the judgment and conviction on case F08-34057 was imposed. See *Taylor v. State*, 65 So.3d 531 (Fla. 1st DCA 2011) (A Petition couldn't be amended when *Taylor* was out of DOC custody).

To bring Mr. Vega back from criminal custody to civil custody, after the expiration of sentence on case F08-34057, a new Petition had to be filed because the judgments and convictions on cases F85-032539, F85-032540, F85-032541, and F86-004761 — were time barred by the twenty (20) years statute of limitations. *The filing of a new Petition never occurred.*

released and couldn't be retried, but the presiding judge granted a State Motion to Set Aside the Verdict and entered an Order of Commitment Notwithstanding the Verdict.

9. Mr. Vega's criminal judgments and convictions on cases F85-032539, F85-032540, F85-032541, and F86-004761 that were utilized as the *qualifying convicted offenses* in the body of the July 8, 2009, Petition, were over 20 years old; and therefore, barred by the civil action statute of limitations.

10. Mr. Vega's Ryce Petition was prosecuted in violation of Florida Statutes 95.11 subsection (1) (an action on a judgment or decree of a court of record in this state must be commenced within 20 years), subsection (6) (laches shall bar any action unless it is commenced within the time provided for legal actions concerning the same subject matter), and subsection (9) (an action on a sexual battery offense on a victim under age 16, is barred, if the crime was committed on or before July 1, 2010).

11. Moreover, the *qualifying convicted offenses* in the July 8, 2009, Petition, that were utilized to bring Mr. Vega out of the criminal prison system and into the civil

commitment system were barred by the civil action statute of limitations.

REASONS FOR GRANTING THE PETITION

THE CRIMINAL JUDGMENTS AND CONVICTIONS THAT ARE BEING UTILIZED FOR INVOLUNTARY CIVIL COMMITMENT ARE OVER 20 YEARS OLD AND THEREFORE BARRED BY THE FLORIDA CIVIL ACTION STATUTE OF LIMITATIONS.

1. The Petition to have Mr. Vega Involuntary Civilly Committed pursuant to Florida Statutes §§ 394.910 - .930 was filed more than twenty (20) years after Mr. Vega's *qualifying criminal convictions* and all conditions precedents to filing such a Petition were present. Therefore, the filing of that petition was time-barred by the statute of limitations.
2. Pursuant to Florida Statutes § 95.11, the statute of limitations for "actions" other than for recovery of real property is twenty (20) years. As noted above, at the time of the filing of the Petition for Involuntary Civil Commitment in this case, more than twenty (20) years

had transpired since the State was able to file that Petition.

3. To prove that Mr. Vega is a sexually violent predator and subject to "civil" commitment, the State must prove each of the following three (3) elements by clear and convincing evidence:

- a. The respondent has been convicted of a sexually violent offense; and
- b. The respondent suffers from a mental abnormality or personality disorder; and
- c. The mental abnormality or personality disorder makes him likely to engage in acts of sexual violence if not confined in a secure facility for long-term control care, and treatment.

4. The State could have filed a Petition for Involuntary Civil Commitment in this case just moments after the Jimmy Ryce Act was passed, yet it waited until the year 2009 to do so; clearly outside the twenty (20) year statute of limitations. The State was able to assert that these elements existed back in May of 1986, after Mr. Vega's convictions. Thus at the time of the convictions, the action had accrued and the statute of limitations

commenced to run. See *March v. Patchett*, 788 So.2d 353 (Fla. 3d DCA 2001) “The life of the original judgment was twenty years. § 95.11 (1), Fla. Stat. (Supp.1980). Upon expiration of that period, execution proceedings directed to that judgment must cease. [Citing] *Young v. McKenzie*, 46 So.2d 184, 186 (Fla.1950).”

5. While commitment only commences “upon expiration of the incarcerated portion of all criminal sentences and disposition of any detainers,” Florida Statutes 394.910-930 does not preclude the State from filing a Petition for Involuntary Civil Commitment as a Sexually Violent Predator on the same day of the conviction after the sentence is imposed and holding the Petition in abeyance. See, e.g., *Jackson v. State*, 166 So. 3d 906 (Fla. 2d DCA 2015).²

6. **Specifically, Florida Statutes § 394.917 (2) states:** If the court or jury determines that the person is a sexually violent predator, upon the expiration of the incarcerated portion of all criminal sentences and disposition of any detainers, the person shall be

² In addition, the SVP Act does not toll the civil statute of limitations. See Florida Statutes § 95.051.

committed to the custody of the Department of Children and Families for control, care, and treatment until such time as the person's mental abnormality or personality disorder has so changed that it is safe for the person to be at large. At all times, persons who are detained or committed under this part shall be kept in a secure facility segregated from patients of the department who are not detained or committed under this part.

7. Thus, the only condition precedent to the State's filing of a Petition for Involuntary Civil Commitment is that the subject be convicted of an eligible crime and the State allege that he suffers from a mental abnormality or personality disorder that makes him likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment.

8. The Petition to have Mr. Vega Involuntary Civilly Committed as a Sexually Violent Predator was predicated upon a judgment of conviction in a criminal case for a kidnapping and sexual battery of a person under the age of 16.

9. **Florida Statute §95.11 (9) specifically addresses this: SEXUAL BATTERY OFFENSES ON**

VICTIMS UNDER AGE 16. —An action related to an act constituting a violation of s. 794.011 involving a victim who was under the age of 16 at the time of the act may be commenced at any time. *This subsection applies to any such action other than one which would have been time barred on or before July 1, 2010.*

10. What the Legislature did with the enactment of subsection (9) above, was END THE CIVIL STATUTE OF LIMITATIONS *on any sex crime having a victim under the age of 16, committed on or after July 1, 2010*, and this enactment is *prima facie* evidence that the statute of limitations applied to sexual offenses committed on or before July 1, 2010. See R.R. and S.B. v. New Life Community Church of CMA, Inc., Priscilla Heffield, Ron Heffield, Christian and Missionary Alliance, Inc., et. al., 43 Fla. L. Weekly D1140 (Fla. 5th DCA May 18, 2018) at note 1. (The “civil action” statute of limitations pertains to sex offenses committed on or before July 1, 2010).

11. Since Mr. Vega’s case predates July 1, 2010, a “civil action” predicated upon the offense of sexual battery *may*

not be filed at any time and is subject to the civil action statute of limitations, as addressed above.

12. **In addition, the Laches doctrine also applies here. Florida Statutes §95.11 (6) states: LACHES. —** Laches shall bar any action unless it is commenced within the time provided for legal actions concerning the same subject matter regardless of the lack of knowledge by the person sought to be held liable that the person alleging liability would assert his or her rights and whether the person sought to be held liable is injured or prejudiced by the delay. This subsection shall not affect application of laches at an earlier time in accordance with law.

13. Since the State failed to file the Petition for Involuntary Civil Commitment against Mr. Vega within the time provided for legal actions concerning the same subject matter, the State was barred from doing so pursuant to the doctrine of laches.

14. The Sexual Violent Predator Act provides no time limitation on the State to file a Petition, but Florida Statutes § 95.11, bars the State from initiating any “civil action” predicated on a criminal judgment and conviction that’s twenty (20) years or older. Therefore, the State was

time-barred and Mr. Vega's Order of Commitment Notwithstanding the Verdict is null and void. See Florida Statutes § 95.011.³

CONCLUSION

The State was barred from prosecuting the Petition for Involuntary Civil Commitment by Florida Statutes 95.11 (1), (6) & (9); Florida Constitution Article 1 §§ 2, 9, & 10, as well as the Federal Constitution. See Stogner v. California, 123 S. Ct. 2446 (2003) (the statutes of

³ **APPLICABILITY.** — A “civil action” or proceeding, called “action” in this chapter, including one brought by the state, a public officer, a political subdivision of the state, a municipality, a public corporation or body corporate, or any agency or officer of any of them, or any other governmental authority, shall be barred unless begun within the time prescribed in this chapter or, if a different time is prescribed elsewhere in these statutes, within the time prescribed elsewhere. § 95.011.

It's indisputable that a Ryce Petition could be filed at any time, but the qualifying convicted offenses — judgments — decrees — underlying criminal convictions —utilized in the filing of the Petition — cannot exceed the twenty (20) years statute of limitations. (Emphasis in original.)

limitations cannot be revived after it has expired.)

Therefore, the instant Petition should be ***Granted***.

OATH

I declare under penalty of perjury that the foregoing is true and correct. Executed on 02/21/2019.

/s/ 
Petitioner.