

19-6368
No. 19A245

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
OCT 16 2019
OFFICE OF THE CLERK
SUPREME COURT, U.S.

Richard Kalinowski -PETITIONER
(Your Name)

vs.

Illinois -RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Illinois Supreme Court
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Richard Kalinowski, B31279
(Your Name)

251 N. Ill. Hwy. 37
(Address)

Ina, IL 62846-2419
(City, State, Zip Code)

N/A
(Phone Number)

QUESTIONS PRESENTED

- I. Does the right to a speedy trial in a civil commitment case, require the Courts to apply a more strict standard of review, due to the loss of liberty involved?
- II. Does due process under the United States Constitution, Amendment XIV, §1., require automatic review on at least an annual basis, without action of the committed individual, for continued confinement cases involving civilly committed sexual offenders, who are pre-trial detainees, and who have not been adjudicated guilty of any crime?
- III. Does due process under the United States Constitution, Amendment VI, right to a speedy trial; require that the Court in which such right is asserted, assume responsibility to ensure that the person who has asserted the right, is granted the right?

LIST OF ALL PARTIES

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

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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 state courts:

The opinion of the highest state court to review the merits appears at Appendix A to this petition and is unpublished.

The opinion of the Fourth District Appeals Court of Illinois appears at Appendix B to this petition and is reported at 2018 IL App(4th) 170823-U.

The opinion of the Illinois State Court appears at Appendix C and is not published.

JURISDICTION

For cases from the state courts:

The date on which the highest state court decided my case was May 22, 2019. A copy of that decision appears at Appendix A.

An extension of time to file the petition for writ of certiorari was granted to and including October 19, 2019 on August 31, 2019 in Application No. 19A245 and a copy of that letter appears at Appendix D.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment XIV, §1

United States Constitution, Amendment VI

Illinois Constitution, 1970, Article 1, §2

725 ILCS 205/9(d), (IL. SDPA)

725 ILCS 205/0.01 et seq. (IL. SDPA)

725 ILCS 207/1 et seq. (IL. SVPA)

STATEMENT OF THE CASE

On February 28, 1997, a one-count Indictment was filed alleging the petitioner, Richard Kalinowski, committed the offense of Aggravated Criminal Sexual Abuse. (C. 84-85). On May 13, 1997, the respondent filed a Petition to have petitioner declared a Sexually Dangerous Person. (C. 437-447). On August 14, 1997, a jury found the petitioner, Richard Kalinowski, to be a sexually dangerous person. (C. 560).

On June 28, 2000, the petitioner filed an Application Showing Recovery-Hearing-Discharge, requesting the petitioner be conditionally released. (C. 856-862). On June 28, 2000, the petitioner filed a Motion for Jury Trial. (C. 846). On June 28, 2000, the petitioner also filed a Motion for Speedy Trial. (C. 847). On July 12, 2000, Judge Appleton appointed Attorney Brian Dees to represent the petitioner for the purposes of the Application Showing Recovery. (C. 28). On July 20, 2000, Judge Appleton entered an Order appointing Brian Dees as Stand-By Counsel. (C. 39).

On October 3, 2000, petitioner filed a Motion for an Independent Socio-Psychiatric Examination. (C. 1314-1318). On October 31, 2000, the petitioner's Motion for Independent Examination was granted. (C. 40). On January 5, 2001, the petitioner filed a Motion for Termination of Stand-By Counsel Brian Dees. (C. 1506-1541). On March 21, 2001, the petitioner filed another Motion for Termination of Stand-By Counsel Other than Brian Dees. (C. 1726 V2-C. 1761 V2). On March 30, 2001, Judge Appleton denied said Motion. (C. 44).

On August 30, 2001, a Psychological Evaluation for Recovery, dated August 4, 2001, was filed with the Sangamon County Circuit Clerk. The evaluation was prepared by Hollida Wakefield, M.A., Licensed Psychologist and Ralph Underwager, Ph.D., Licensed Psychologist. (E. 55-103). The evaluators concluded that

"a period of conditional release while Mr. Kalinowski engages in community based offender treatment has the best chance of minimizing his risk of recidivism and thus protecting the community."
(E. 95)

On December 27, 2001, the Presiding Judge assigned the case to Judge Charles Gramlich. (C.2535 V3). On January 10, 2002, the petitioner filed a Motion to Terminate Brian Dees and Appoint Another Stand-By Counsel. (C.2576 V3-2583 V3). On January 25, 2002, the petitioner filed a Motion to Renew Speedy Trial Request. (C. 2603 V3-2605 V3). On January 30, 2002, at a hearing in which the petitioner was present, Judge Gramlich ordered Brian Dees to become regular counsel, not remaining at current status of Stand-By Counsel. Petitioner was further ordered to stop all ex parte communication with the Court. Petitioner's Motion to Substitute Counsel was denied. (C.52)

On May 6, 2002, the petitioner filed a Motion to Appoint Brian Dees as Stand-By Counsel. (C.2639V3-2641V3). On September 6, 2002, the petitioner filed a Motion to Represent Himself During All Proceedings regarding the Application Showing Recovery, with Stand-By Counsel appointed to help petitioner when needed. (C.2744V3-2745V3). On April 18, 2003, the petitioner filed a Motion for Waiver of Counsel in Order to Represent Himself As Is His Constitutional Right and Memorandum of Law in Support. (C.2770 V3, C.2772V3, C2774V3, C.2780V3).

On October 21, 2002, a hearing was held with Assistant State's Attorney Sheryl K. Essenburg, Attorney Brian Dees and Judge Charles Gramlich. The petitioner was not present. The Court stated:

"As of now, as of this hearing today, Mr Dees represents Mr. Kalinowski. And I have told Mr. Kalinowski before that any communication he has with the Court is to take

place through Mr. Dees and not by Mr Kalinowski filing something on his own." (C.3009V3).

The Court entered an Order directing a copy of the October 21, 2002, hearing transcript be sent to the petitioner. (C.2758V3). On November 6, 2002, the transcript was sent to the petitioner by the Clerk. (C.2762V3).

On September 16, 2004, a hearing was held with counsel only. The trial Court indicated at a hearing on February 4, 2003, with counsel and the petitioner present, that a trial was to begin within seventy-five days. A trial had not started as of September 16, 2004. The Court stated:

"But it seems to me, Mr. Dees, that you don't have much incentive to talk to your client unless I prod you. And frankly, I don't think that's my job. I think it's your job to represent your client, and I think it's your job to talk to your client whether that be by telephone or in writing."

The Court also indicated:

"Now, I want this case resolved. I want it resolved. I don't take cases and let them twist in the wind indeterminably. And I don't care what it takes. I want this resolved. So I want you to contact your client forthwith, and I want you to explain to him his rights, and I want you to outline what a Fry hearing isn't and explain to him the status of the law as it has been addressed by recent Appellate Court decisions concerning experts." (C.2958V3-2967V3).

The Court ordered that a transcript of the hearing be prepared and sent to the petitioner. On September 21, 2004, the transcript was sent to the petitioner. (C.2814V3-2816V3).

On November 21, 2004, Attorney Dees filed a Motion for Appointment of Psychological Expert. (C.2814V3-2819V3). On December 21, 2004, the Court denied the Motion for Appointment of Psychological Expert. (C.59).

The petitioner sent a letter to Judge Gramlich requesting the appointment of counsel to help him file a State Habeas case which was file stamped December 29, 2004. (C.2824V3). In a letter dated December 27, 2004, Judge Gramlich informed the petitioner he did not have the authority to grant the request for appointment of counsel. (C.2825V3).

On January 12, 2005, the petitioner filed a Notice of Appeal. (C.2827V3-2829V3). On June 16, 2005, the Appellate Court allowed the petitioner's Motion to Dismiss Appeal. (C.2849V3-2895V3). On June 21, 2005, the Sangamon County Circuit Clerk received the record from the Appellate Court. (C.2896V3).

On March 2, 2012, a letter from the petitioner was filed with the Circuit Clerk requesting preparation of Common Law Record. On March 7, 2012, the Circuit Clerk served a copy of the letter from the petitioner requesting preparation of Common Law Record and Exhibits on Attorney Brian Dees and Assistant State's Attorney Sheryl K. Essenburg. (C.2900V3-2904V3). On March 12, 2012, Judge Leslie Graves denied the petitioner's request, as no post trial motions have been filed in this matter. (C.2905V3). On March 12, 2012, a proof of service of said Order was sent to Assistant State's Attorney Sheryl Essenburg, Attorney Brian Dees and the petitioner. (C.2906V3-2908V3).

On May 15, 2012, the petitioner filed a Petition for Habeas Corpus relief in Sangamon County Case No. 12-MR-445. In Ground 3 of the Petition, the petitioner stated that he had been deprived of his Constitutional Rights to equal protection of Law and due process of Laws because the State had failed to hold a recovery

hearing on the petitioner's Application Showing Recovery filed on June 28, 2000, in Sangamon County Case No. 97-CF-103. (C.3020V3-3026V3). On May 30, 2012, Judge John Schmidt dismissed the petitioner's case in 12-MR-445. (C.3027V3).

On January 2, 2015, the petitioner filed Plaintiff's Petition for Habeas Corpus Relief in Sangamon County, Illinois. The petitioner attempted to file the petition in Sangamon County Case No. 97-CF-103. The Sangamon County Circuit Clerk filed the case as 15-MR-5. In Argument 2, the petitioner alleged that his Constitutional right to a speedy trial had been violated in Sangamon County Case No. 97-CF-103. (C.3031V3-3034V3). On May 2, 2015, an Order was entered dismissing the petition in 15-MR-5. (C.3046V3-3047V3).

On July 1, 2015, the petitioner filed a Motion to Represent Himself. (C.2909V3-2911V3). On July 29, 2015, Attorney Craig Reiser was appointed to represent the petitioner. (C.2921V3).

On August 28, 2015, the petitioner withdrew his Motion to Go Pro Se filed on July 1, 2015. (C.63). On September 17, 2015, the petitioner, through his attorney Craig Reiser, filed a Motion to Dismiss alleging that his right to a speedy trial had been violated. (C.2923V3-2925V3).

On October 14, 2015, the respondent filed People's Response to Petitioner's Motion to Dismiss. (C.2926V3-2935V3). On February 3, 2016, the petitioner, through his counsel, filed a Reply to People's Response to petitioner's Motion to Dismiss. (C.2945V3-2967V3). Attached to the Reply was an Affidavit by the petitioner, Richard Kalinowski. (C.2956V3-2957V3). On March 21, 2016, the People filed People's Addendum to Response to Motion to Dismiss. (C.2969V3-3047V3). A hearing was held on March 28, 2016. (C.64).

On May 23, 2016, an Order was entered denying the petitioner's Motion to Dismiss for Speedy Trial Violation and ordering the petitioner to file a new Application for Recovery. The trial Court found that from 2005 to 2015, the petitioner failed to assert any right to a speedy trial and pursuant to the doctrine of laches, the petitioner waived his right to a speedy trial. (C.3050V3-3051V3).

On June 9, 2016, the petitioner, through his counsel, filed a Motion to Reconsider. (C.3056V3-3057V3). On August 23, 2016, at the hearing on Motion to Reconsider, the Court ordered an independent examination. (C.65). On July 5, 2017, the Court granted the State's Motion for an evaluation. (C.65).

On November 3, 2017, the petitioner's Motion to Reconsider was denied. The petitioner's Motion to Dismiss regarding ineffective assistance of counsel was denied. The Court ruled the petitioner must file a new Application for Recovery. (C.3088V3).

On November 3, 2017, Attorney Reiser was appointed to represent the petitioner on appeal. (C.3088V3). On November 9, 2017, a Notice of Appeal was filed. (C.3089V3-3090V3).

On December 11, 2018, the Fourth District Court of Appeals affirmed in part and vacated in part, cause remanded with directions, petitioner's appeal.

On February 19, 2019, petitioner filed a petition for Leave To Appeal to the Illinois Supreme Court pursuant to Supreme Court Rule 315. On May 22, 2019, the Illinois Supreme Court denied the petition for Leave to Appeal.

Petitioner has now filed a petition for Writ of Certiorary to the United States Supreme Court.

REASONS FOR GRANTING THE PETITION

Both the Illinois and United States Constitutions protect individuals from deprivation of liberty without due process of law. (U.S. Const., amend. XIV; Ill. Const. 1970, art. 1 § 2.) The due process clause provides "heightened protection against government interference with certain fundamental rights and liberty interests." (People v. Gilford, 361 Ill. APP. 3d 56, 836 N.E. 2d 825 (1st Dist. 2005) quoting *Troxel v. Granville*, 530 U.S. 57, 65, 120 S.Ct. 2054, 2059-60 (2000).)

The right to freedom from physical restraint is a fundamental right. (*Foucha v. Louisiana*, 504 U.S. 71, 80, 112 S.Ct. 1780, 1785 (1992).) This fundamental right is at stake in a civil commitment proceeding. (Gilford, 361 Ill. APP. 3d 56, 836 N.E. 2d 825 (1st Dist. 2005) citing, *In re Linehan*, 594 N.W. 2d 867,872 (Minn. 1999); *In re Dotil*, 437 Mass. 9, 13, 768 N.E. 2d 1055, 1061 (2002).)

"[T]he Due Process Clause contains a substantive component that bars certain arbitrary wrongful government actions regardless of the fairness of the procedures used to implement them." (*Zinerman v. Burch*, 494 U.S. 113, 125 (1990) (internal citation omitted); See also, *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 845 (1998) (noting that the Supreme Court has "emphasized time and again that the touchstone of Due Process is protection of the individual against arbitrary action of government") (internal citation omitted).)

Indefinite commitment under the Illinois Sexually Dangerous Persons Act (725 ILCS 205) unquestionably constitutes a "Significant deprivation of Liberty" that infringes upon one's fundamental right to be free from confinement. See, (*Jones v. United States*, 463 U.S. 354, 361 (1983) ("[C]ommitment for any purpose constitutes a significant deprivation of liberty that requires due process protection."))

The United States Supreme Court has made it clear that civil commitment of individuals "Who, by reason of a mental disease or abnormality, constitute a real, continuing, and serious danger to society" is permitted, provided there is no object or purpose to punish. (*Kansas v. Hendricks*, 521 U.S. 346, 372 (1997) (Kennedy, J. concurring) (citing *ADDington v. Texas*, 441 U.S. 418, 426-27 (1979).))

The instant case and issue presented arises out of the Illinois Sexually Dangerous Persons Act (Hereinafter SDPA). An individual subject to the SDPA has a due process right to a speedy trial. (*People v. Donath*, 2013 Ill. APP. 3d 120251 (2013).) The Donath decision clearly holds that delays approaching one year are generally presumed to be prejudicial, such that they will trigger consideration of four factors:

- 1) Length of delay in bringing the respondent to trial;
- 2) The reasons for delay;
- 3) Prejudice, if any to respondent;
- 4) And the respondent's assertion of that right.

(*People v. Donath*, at 1230, citing *Barker v. Wingo*, 407 U.S. 514 (1972).)

In *Kansas v. Hendricks*, (1997), 521 U.S. 446, the Court upheld an SVP Act in part because it had adequate procedural safeguards, including a right to a trial on an annual basis. The Illinois SDPA does not include similar procedural safeguards. In 1986, this Court reviewed the Illinois SDPA in *Allen v. Illinois*, 478 U.S. 364 (1986), though before the court on a different issue, at the time a person subject to the SDPA could file for release at any time. (*Allen*, 478 U.S. at 369) In addition "In short, the State has disavowed any interest in punishment, provided for the treatment of those it commits, and established a system under which committed persons may be released after the briefest time in confinement. (*Allen*, 478 U.S. at 370.)

Today Illinois has taken a dramatic departure, as individuals under the SDPA can only file for release every two years from the date of the last disposition. (725 ILCS 205/9(d)) In the instant case it took the respondent fifteen (15) years to get to trial for release. Five years of this delay was attributable to the respondent, however ten (10) years has been attributed to the State Court and the prosecution.

Essentially, the petitioner's right to due process has been trampled on to a point of non-existence. The Fourth District's Appellate decision did nothing to ensure that this petitioner's rights were protected, yet openly admitted "As a result of these failures, a person was held in prison for ten years without receiving a hearing on his application showing recovery. (Appendix B ¶ 66)

The petitioner presents his questions for review, not to merely benefit himself, but all of those nationwide who are committed in civil commitment programs designed to treat sexual offenders. The Illinois SDPA is the only pre-ajudication sex offender civil commitment program that remains in existence in the United States. The fact alone that individuals subject to the SDPA in Illinois have not been convicted of any wrong doing, but in fact have been involuntarily committed for the purpose of "treatment designed to effect recovery" should raise grave concern to this Court when viewing the current practices of the State of Illinois. The State of Illinois is also the only state in the Union that has both the SDPA (725 ILCS 205) and the SVPA (725 ILCS 207). The difference here is that those who are committed post-ajudication under the SVPA automatically get reviewed for release on an annual basis, however those who are committed prior to a finding of guilt beyond a reasonable doubt, do not receive the same automatic review, and must, on their own action, file for release.

The result is exactly what has happened in the instant case. Years go by while one waits to be released from a system that disavows any interest in punishment and vows release within the briefest period of time in confinement. (Allen, 478 U.S. at 370.) Nothing could be further from the reality and application of the Illinois SDPA. The State of Illinois has dramatically departed from this Court's assessment of the SDPA in Allen, and the result is serious deprivations of the right to due process.

The issues and questions presented within this petition are systemic in relation to civil commitment across the nation. They are pervasive and depart dramatically from the stated purpose for such programs. As a result the Illinois SDPA in particular, has become a warehousing operation, that deprives persons of their right to even minimal due process protections. The petitioner feels that if he were not an accused sexual offender, the Courts would force the State of Illinois to adhere to the Constitutional principals. The petitioner feels that the Illinois Appellate Fourth District's opinion severely departed from *Barker v. Wingo*, 407 U.S. 514 (1972) and *Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S.Ct. 893, and the practice in Illinois needs to be reviewed by this Court in order to protect the individuals subject to the Illinois SDPA and similar programs nationwide from violation of their Constitutional right to due process. The fundamental requirement of due process is the opportunity to be heard "at a meaningful time and in a meaningful manner." (*Armstrong v. Manzo*, 380 U.S. 545, 552, 85 S.Ct. 1187, 1191 (1965).)

Lastly, the petitioner herein would state that "the minimum requirements of procedural due process" are not diminished by the fact that the State may have specified its own procedures that it may deem adequate for determining the preconditions to adverse official action." (*Vitek v. Jones*, (1980) 445 U.S. 480, 491, 100 S.Ct. 1254.)

In the State of Illinois the Courts have determined that it's okay for a release hearing within a civil commitment case of an individual who has not been found guilty of a crime, to go on for fifteen years, ten of which were attributed to the State.

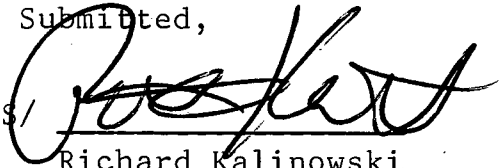
If this case did not involve an accused sex offender, the petitioner feels that we would not be in the place we find ourselves today. This issue is not only plaguing the State of Illinois, but many States who have sex offender civil commitment programs are faced with the same issue concerning release practices.

The issues presented and the questions submitted for review, go to the very heart of due process protection. At least twenty-one States have similar programs, all of which have faced scrutiny about the release of individuals subjected to them and what due process requires for these procedures. It is long overdue that our Supreme Court review the release standards, the application of the right to a speedy trial, and issue standards by which the States must abide in order to ensure that the due process protections, guaranteed by the Sixth, and Fourteenth Amendments of our United States Constitution, are protected within civil commitment programs across the nation. A good example of the obvious flaws in this system is the instant case. The petitioner feels that the questions presented allow this Court to set the standard necessary to protect the rights of this petitioner and the many thousands of others similarly situated.

* CONCLUSION *

WHEREFORE, the Petitioner herein, Richard Kalinowski, hereby prays that This Honorable Court will elect to grant Certiorari, and review the questions presented.

Respectfully Submitted,

/s/ 

Richard Kalinowski

ID. #B31279