Case No.: _____

IN THE

SUPREME COURT OF THE UNITED STATES

JUAN FRANCISCO VEGA,

PETITIONER/APPELLANT,

V.

CHAD POPPELL,

SECRETARY OF FLORIDA DEPARTMENT OF CHILDREN

AND FAMILIES,

RESPONDENT/APPELLEE

APPENDIX-A

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-10451-J

JUAN FRANCISCO VEGA,

Petitioner-Appellant,

versus

THE ATTORNEY GENERAL,OF THE STATE OF FLORIDA,
Pamela Jo Bondi, in her official capacity,
SECRETARY, DEPARTMENT OF CHILDREN & FAMILIES,
Mike Carroll, in his official capacity,

Respondents-Appellees.

Appeal from the United States District Court
for the Southern District of Florida

ORDER:

Juan Vega is a Florida inmate who was involuntarily civilly committed in 2013 as a sexually violent predator, under Florida's Jimmy Ryce Act, Fla. Stat. §§ 394.910-394.932.[1] In 2018, he filed the instant 28 U.S.C. § 2254 petition, challenging his commitment proceedings.[2] In his petition, Mr. Vega raised three claims:

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[1] Under this Act, a person determined to be a sexually violent predator by a court or jury "shall be committed . . . 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." Fla. Stat. § 394.917.

[2] Neither party, nor the district court, addressed whether a § 2254 petition is the proper avenue for such relief. Independent research failed to provide caselaw clarifying this issue, but both this Court and the Supreme Court have addressed appeals from denials of § 2254 petitions challenging commitment proceedings.

(1) the trial court violated his constitutional rights when it granted the state's motion for directed verdict after the jury's non-unanimous verdict;

(2) appellate counsel was ineffective for failing to argue that: (a) the state had failed to renew its directed verdict motion after the close of evidence: and (b) the expert witnesses gave conflicting testimony, precluding a directed verdict; and

(3) the Jimmy Ryce Act is unconstitutional.

A magistrate judge issued a report and recommendation ("R&R"), recommending denying Mr. Vega's claims on the merits. The district court adopted the R&R over Mr. Vega's objections, denied his petition, denied him a certificate of appealability ("COA"), and, in a subsequent order, granted his motion for *in forma pauperis* status. He appealed, and now seeks a COA.

Mr. Vega's first claim does not warrant a COA. First, in the specific context of commitment proceedings, there is no clearly established Supreme Court case holding that due process requires a jury trial or incorporates the Seventh Amendment right to jury for such cases, and thus, he cannot claim that the state unreasonably applied federal law in denying his claim. *See Wright v. Van Patten*, 552 U.S. 120, 126 (2008). Second, Mr. Vega failed to show a due process violation because the state trial court appropriately followed the procedures as defined by the Jimmy Ryce Act, which expressly incorporates Florida Rules of Civil Procedure and allows a judge to grant a directed verdict after the jury's verdict. *See* Fla. Stat. § 394.9155(1); Fla. R. Civ. P. 1.480(b).

Mr. Vega's second claim does not warrant a COA because he failed to show that counsel acted deficiently. First, the Florida Rules of Civil Procedure were amended to remove the rule requiring a motion for directed verdict to be renewed at the close of all evidence. *See* Fla. R. Civ. P. 1.480(b). Thus, any argument on appeal on the issue would have been meritless. Second, given the high standard required for federal habeas review in analyzing counsel's action, on top of the

deference afforded to state courts in § 2254 review, Mr. Vega failed to show that counsel's failure to bring this claim amounted to performing "outside the wide range of professional competence." *See Putman v. Head*, 268 F.3d 1223, 1243 (11th Cir. 2001).

Finally, Mr. Vega's third claim does not warrant a COA because the Florida Supreme Court determined that the Jimmy Ryce Act does not violate a detainee's due process or equal protection rights. *Westerheide v. State*, 831 So.2d 93 (Fla. 2002). The Supreme Court has not ruled on this issue, and thus, absent a "clear answer" from the Court, "it cannot be said that the state court unreasonably applied clearly established Federal law." *Wright*, 552 U.S. at 126.

Accordingly, his motion for COA is DENIED.

/s/ Jill Pryor
UNITED STATES CIRCUIT JUDGE

Case No.: _____

IN THE

SUPREME COURT OF THE UNITED STATES

JUAN FRANCISCO VEGA,

PETITIONER/APPELLANT,

V.

CHAD POPPELL,

SECRETARY OF FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES,

RESPONDENT/APPELLEE

APPENDIX-B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 18-20729-CIV-ALTONAGA/Reid

JUAN FRANCISCO VEGA,

Petitioner,

v.

CHAD POPPELL, Secretary,
Department of Children and Families,

Respondent.
_____/

ORDER

THIS CAUSE came before the Court on Petitioner, Juan Francisco Vega's *pro se* Amended Petition Under Title 28 U.S.C. [Section] 2254 for Writ of Habeas Corpus by a Person in State Custody [ECF No. 4], filed April 10, 2018. On November 26, 2019, Judge Lisette M. Reid[1] entered her Report of Magistrate Judge [ECF No. 31], recommending the Petition be denied and no certificate of appealability issue. Petitioner filed timely Objections [ECF No. 32] and an Addendum to the Objections [ECF No. 34]; to which the Respondent filed a Response [ECF No. 37].

The Court assumes the reader's familiarity with the facts and procedural history of this case, which are detailed in the Report.[2] (*See* Report 3–19). The present Petition raises three grounds for relief: (1) Petitioner's constitutional rights were violated when the state trial court directed a verdict in favor of the State of Florida; (2) appellate counsel was ineffective in failing

[1] The Clerk referred the case to Magistrate Judge Reid under Administrative Order 2019-2 for a report and recommendation on any dispositive matters. (*See* Case Reassignment [ECF No. 25]).

[2] Petitioner does not object to the factual or procedural background set forth in the Report. (*See generally* Obj.; Addendum Obj.).

to raise specific issues[3] with the State's motion for directed verdict; and (3) the Involuntary Civil Commitment of Sexually Violent Predators Act[4] (the "Act"), section 394.910, Florida Statutes *et seq.*, is unconstitutional. (*See generally* Am. Pet.).

The Report disagrees, concluding Petitioner fails to demonstrate the state trial court's decision was either contrary to, or an unreasonable application of, clearly established federal law, or based on an unreasonable determination of the facts. (*See generally* Report). In a thorough and well-reasoned Report, Judge Reid finds: (1) there is no constitutional right to a jury trial in civil commitment proceedings (*see id.* 26–30); (2) the state trial court's decision was not an unreasonable determination of the facts presented (*see id.* 30–34); (3) Petitioner fails to show appellate counsel was ineffective with respect to the directed verdict issue (*see id.* 34–38); and (4) Petitioner's constitutional challenges to the Act lack merit (*see id.* 38–42). The Magistrate Judge reviewed Petitioner's submissions, the transcripts of the state court proceedings, and the applicable case law governing the issues raised in the Petition.

When a magistrate judge's "disposition" has been properly objected to, district courts must review the disposition *de novo*. Fed. R. Civ. P. 72(b)(3). Petitioner raises three specific objections to the Report, and so the Court reviews those issues *de novo*. (*See generally* Obj.; Addendum Obj.); *see also Macort v. Prem, Inc.*, 208 F. App'x 781, 784 (11th Cir. 2006) ("Where a proper, specific objection to the magistrate judge's report is made, it is clear that the district court must conduct a *de novo* review of that issue." (citations omitted)).

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[3] Petitioner contends appellate counsel did not raise: (1) the State's failure to renew its motion for directed verdict at the close of evidence; and (2) the conflicting expert testimony precluded a directed verdict. (*See* Am. Pet. 10–13). Petitioner does not object to the Report's finding the ineffective-assistance-of-counsel claim should be denied. (*See* Report 34–36). The Court agrees with the Report's analysis as to Petitioner's ineffective-assistance-of-appellate-counsel claim.

[4] The Act is commonly referred to as the "Jimmy Ryce Act." *Pesci v. Budz*, 730 F.3d 1291, 1292 (11th Cir. 2013) (internal quotation marks omitted).

Federal review of state habeas petitions is governed by the Anti-Terrorism and Effective Death Penalty Act of 1996. *See, e.g.*, *Brumfield v. Cain*, 135 S. Ct. 2269, 2288 (2015). Section 2254 provides that federal habeas relief for a person in state custody is available only if the state court decision was "contrary to, or involved an unreasonable application of clearly established Federal law, as determined by the Supreme Court of the United States" or if a petitioner's state court claim "resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." *Id.* at 2288–89 (internal quotation marks omitted) (quoting 28 U.S.C. § 2254(d)(1)–(2)).

First, Petitioner claims his constitutional rights were violated when he was involuntarily committed to a civil commitment center without receiving a jury trial and verdict. (*See* Obj. 2, 4). Petitioner insists a jury trial is constitutionally required when a liberty interest is at issue. (*See id.* 2). According to Petitioner, the "jury's verdict must be reinstated." (*Id.*).

The Court has conducted a *de novo* review and concurs in the comprehensive analysis of the Report. (*See* Report 26–34). The Court agrees Petitioner has no constitutional right to a jury trial before he is involuntarily committed by the state as a sexually dangerous person. *See, e.g.*, *Aruanno v. Hayman*, 384 F. App'x 144, 152 (3d Cir. 2010) (joining sister circuits in holding "the Constitution does not demand that a jury trial be provided before an individual is involuntarily committed by the state as a sexually dangerous person."); *United States v. Carta*, 592 F.3d 34, 43 (1st Cir. 2010) ("[T]he claim to a jury trial right in civil commitments has been rejected under not only the Due Process Clause but also the Sixth and Seventh Amendments." (alteration added; citations omitted)); *Poole v. Goodno*, 335 F.3d 705, 710 (8th Cir. 2003) (The "state court decision declining to grant a jury trial in [a commitment] case is not contrary to, or an unreasonable application of, clearly established federal law as determined by the Supreme Court." (alteration

added)).

Second, Petitioner claims the Act is "unconstitutional because it allows the State . . . to civilly commit [him] on the basis of a mental abnormality or personality disorder." (Obj. 3 (alterations added)). According to Petitioner, the Supreme Court "forbids that [his] civil detention be on the basis of one or the other"; instead, Petitioner insists the "mental abnormality must be coupled with the personality disorder." (*Id.* (alteration added)).

Again, the Court agrees with the Report. (*See* Report 38–42). The Court finds no merit to Petitioner's constitutional challenges. *See, e.g.*, *Kansas v. Hendricks*, 521 U.S. 346, 358 (1997) ("We have sustained civil commitment statutes when they have coupled proof of dangerousness with the proof of some additional factor, such as a 'mental illness' or 'mental abnormality.' . . . The precommitment requirement of a 'mental abnormality' or 'personality disorder' is consistent with the requirements of these other statutes that we have upheld in that it narrows the class of persons eligible for confinement to those who are unable to control their dangerousness." (alteration added; citations omitted)); *Dewitt v. Carroll*, 307-cv-439-J-32, 2015 WL 3604946, at *12 (M.D. Fla. June 8, 2015) (noting the Act "is nearly identical in every major respect to Kansas's SVP commitment statute, which the Supreme Court upheld in *Hendricks*."); *Westerheide v. State*, 831 So. 2d 93, 112 (Fla. 2002) (discussing constitutionality of the Act and finding no merit to the defendant's constitutional challenges).

Third, Petitioner claims the conflicting expert testimony precluded a directed verdict[5] in

[5] Florida's Third District Court of Appeal recently addressed an issue of "first impression" as to "[w]hether a trial court is authorized by statute or rule to direct a verdict in favor of the State in a Jimmy Ryce jury trial," holding:

> Given that the Jimmy Ryce Act and the Jimmy Ryce Rules expressly incorporate the [Florida] rules of civil procedure (by which either party may seek a directed verdict), and the fact that a motion for directed verdict under the [Florida] rules of civil procedure is not prohibited or otherwise superseded by any provision of the Jimmy Ryce Act or the Jimmy

favor of the State. (*See* Addendum Obj. 1–2). Specifically, Petitioner objects to the state trial court's evaluation of the expert testimony and evidence presented. (*See id.*). But, as accurately stated in the Report, "[i]n light of the evidence presented to the trial court, [the state trial court's] decision was not an unreasonable determination of the facts presented" and "there is no principle of federal law the contravenes the trial judge's actions in the instant case." (Report 34 (alterations added); *see also id.* 30–34). The Court agrees the state trial court's decision was neither contrary to federal law nor based on an unreasonable determination of fact.

The undersigned has reviewed the Report, record, and applicable law *de novo*. In light of that review, the undersigned agrees with the Report's recommendations.

Accordingly, it is **ORDERED AND ADJUDGED** that the Report **[ECF No. 31]** is **ACCEPTED AND ADOPTED** as follows:

1. Petitioner, Juan Francisco Vega's Amended Petition Under Title 28 U.S.C. [Section] 2254 for Writ of Habeas Corpus by a Person in State Custody **[ECF No. 4]** is **DENIED**.
2. No certificate of appealability shall issue.
3. The Clerk of the Court is directed to **CLOSE** this case, and all pending motions are **DENIED as moot**.
4. Judgment will be entered by separate order.

Ryce Rules, we hold that the trial court has the authority, upon proper motion and showing, to enter a directed verdict in favor of the State or respondent.

Gering v. State, 252 So. 3d 334, 336, 340 (Fla. 3d DCA 2018) (alterations added), *review denied*, SC18-1343 (Fla. Dec. 17, 2018), *and cert. denied sub nom. Gering v. Florida*, 139 S. Ct. 1580 (2019).

DONE AND ORDERED in Miami, Florida, this 21st day of January, 2020.

Cecilia M. Altonaga

CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE

cc: Petitioner, Juan Francisco Vega, *pro se*
counsel of record
Magistrate Judge Lisette M. Reid