No 20-5133

ORIGINAL

In The Supreme Court of the United States

Lonnie Kade Welsh

VS

The State of Texas

On Petition for a Writ of Certiorari

Texas Court of Criminal Appeals from Judgment

Wr-74,374-0-7

PETITION FOR WRIT OF CERTIORARI

Lonnie Kade Welsh

Texas Civil Commitment Center

2600 S. Sunset Ave.

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Questions Presented For Review

In the State of Texas there are two supreme courts one criminal the other civil. The Texas Supreme Court has concluded that those committed were insane or could not be found to have a culpable mindset during the criminal episode due to an emotional or volitional capacity disorder. It is common practice in Texas to wait until after a criminal conviction to come forward with capacity evidence to establish a disorder, characterizing the individual insane or lacking the necessary mens rea as determined by a state defined and created mental illness. Civil commitment follows a trial that was based upon the crimes, as evidence to prove the lack of capacity under the beyond reasonable doubt standard. But the Texas Court of Criminal Appeals after reviewing the commitment by writ of habeas corpus, presented to the lower criminal courts, would determine that mens rea and sanity was indeed present during the same crime and uphold the conviction, refusing to accept the commitment as proof of a capacity disorder during the commission of the crime. Therefore, based upon the same facts within the criminal episode Welsh is to be considered both blameworthy and blameless. The questions presented are as follows:

1.Would the State of Texas cause a fundamental miscarriage of justice violating the United States Fourteenth Amendment by refusing to overturn the criminal sentence due to the evidence produced at a subsequent civil trial of actually innocent of the criminal act because he lacked mental capacity?

2.Does the State of Texas commit fraud by maintaining two definitions of insanity, criminal and civil where both are relevant to the crime but not germane to each other, being inapposite in their respected conclusions, one is forbidden in the criminal proceedings though it later uses the crime to prove a lack of freewill making the natural colloquy suggest that the conviction of the crime could not have been proved beyond a reasonable doubt in contravention to the United States Fourteenth Amendment?

3. To work effectively, it is important that society's criminal process "satisfy the appearance of justice," does the State of Texas violate this principle infringing upon the United States Fourteenth Amendment?

List of Parties

All parties appear in the caption of the case. Related cases are as follows.

1. In recommitment of Lonnie Kade Welsh cause no.15 - 01 - 659

2. Ex Parte Lonnie Kade Welsh WR-74,374-0-4

3. Ex Parte Lonnie Kade Welsh WR-74,374-0-5

4. Ex Parte Lonnie Kade Welsh WR-74,374-0-6

5 State v Welsh cause no. B1002 198th District Court Kerr County TX, 700 Main St. Second Floor, Kerrville TX 78028 Phone number 830-792-2290

6. State v Welsh cause no. 2010CR12730 187th District Court Bexar County, Cadena-Reeves Justice Center, 300 Dolorosa, 4th Floor San Antonio, TX 78205. Phone number 210-335-2011.

7. State v Welsh cause no. A06-490, 216th District County TX, 700 Main St. Second Floor, Kerrville, TX 78028 Phone no. 830-792-2290.

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In the Supreme Court of the United States

Petition for Writ of Certiorari

Petitioner respectfully prays based upon the premise within the "Reason for Granting the Writ" that a Writ of Certiorari is issued to review the judgment of the Texas court of criminal appeals

I Opinion Below

The Texas Court of Criminal Appeals opinion accepted the three lower district courts conclusion without written order.

The opinion for the 198th District Court of Kerr County, Texas at Appendix E

The opinion for the 187th District Court of Bexar County Texas at Appendix F

The 216th District Court of Kerr County, Texas declined to answer the writ of habeas corpus. The court's opinion is reflective of the Texas court of criminal appeals.

II Jurisdiction

The date on which the Texas court of criminal Appeals decided the writ of Habeas Corpus was March 11th, 2020. The petition for writ of Certiorari is timely filed within 90 days placed with United States Postal Service postage prepaid pursuant to United States Supreme court rule 29(2) and 13(1). Jurisdiction under statute as an appeal from the highest state court under 28 U. S. C. 1257

III Constitutional and Legal Principles

1. The United States Constitutional 14th amendment due process clause principles of proof beyond a reasonable doubt.

2. The United States Constitutional 14th amendment due process clause principle of actual innocence.

3. The United States Constitutional 14th amendment due process clause principle of substantive due process forbidding arbitrary government action.

4. The United States Constitutional 14th amendment due process clause principles of substantive due process consisting of the standards of shock -the- conscious fundamental fairness, and the law of the land.

5. The United States constitutional 14th amendment due process clause principles under the United States constitutional 8th amendment preventing cruel and unusual punishment.

6. The United States 14th amendment due process clause principles to prevent judgment like by fraud.

Justice Thomas further articulated that the criminal episode is used "for evidentiary purposes" as a pattern of behavior "to demonstrate that a mental abnormality exists or to support a finding of future dangerousness[;]" and reasoned that the historic application of such law was not to punish but, "restrict the freedom of the dangerously mentally ill" id at 363. As the esteem Justice Thomas put in another way the "Behavior Abnormality" is a legislature policy choice to legally define a term of a medical nature, "which must take into account such issues as individual responsibility ... and competency," id at 359, (quoting American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders xxxiii, xxvii (4th ed. 1994)).

The issue of "individual responsibility and competency" turns upon the other relevant criteria of the "Behavior Abnormality" and maybe the most important aspect, being that the "sexual offender whose serious mental illness, abnormality or disorder", distinguished him, from the dangerous but typical recidivist convicted as an ordinary criminal. Kansas v crane 534 U. S. 407, 413; or put another way "lack of volitional control coupled with that prediction of future violence[,]" would adequately distinguish the petitioner "from other dangerous persons who are perhaps more properly dealt with exclusively through criminal proceedings." Hendricks supra at 360.

Therefore, under the understanding that the State of Texas received a directed verdict with the criminal charges A06-490 "indecency with a child", B1002 "sexual assault", and 2010CR12730, and utilize such evidence in the commitment trial 15-01-659-CV by the recital of the criminal acts the state proved beyond a reasonable doubt that the petitioner had an emotional and volitional capacity disorder that predisposed him to commit the aforementioned crimes, and it would make no sense to suggest that the "Behavioral Abnormality" was acquired after or near the end of his criminal sentence, petitioner filed a Writ of Habeas Corpus in all three convicting courts. See Appendix # E, F, G.

The general premise of all three writs followed a central theme, and that is, what separates those amorally dangerous criminals who should be dealt with by the criminal justice system and those who's mental disease or defect of the mind, is so serve as to warrant commitment. The answer was criminal

culpability, otherwise known as the evil mind of mens rea or the petitioner was insane at the time of the offense.

Moving forward the three convicting courts took different routes to come to the same conclusion and that the "Behavioral Abnormality" as either capacity evidence or evidence of insanity as described in the Tex. Health. Safety Code 841.002(2) has no bearing upon the convictions. In A06-490 the convicting court passed the questions to the Texas Court of Criminal Appeals without answer. The 2010CR1270 court vaguely cites how to use new evidence in a writ of habeas corpus without deciding if petitioner did use the evidence correctly. The court further admonished the petitioner of his burden and determined that the commitment of Welsh by the Behavioral Abnormality "does not raise any claims, which if true, entitled him to relief on either ground. See appendix F. In B1002 the convicting court was explicit stating that the petitioner did not demonstrate the lack of "mens rea, necessary to commit the crime" or that the "new evidence demonstrated nothing more than he may have been unable to conform his behavior to that required by law" and that he knew "right from wrong." See Appendix G. Consequently, The Texas Court of Criminal Appeals dismissed all three without answer on March 11, 2020.

The petitioner submitted a memorandum of law with all three writ of habeas corpus to the lower Texas District Courts. It is also clear that the Texas Court of Criminal Appeals considered all three writs "En Banc" and dismissed all the writs on the same day. See Texas Rules of Appellate Procedure § 76. Therefore, the Texas Court of Criminal Appeals having considered and construed petitioner's writ of habeas corpus and memorandum of law liberally in which it is constitutionally bound to do, understood the nature of the constitutional argument and adopted the lower court's opinion.

It must be noted the term "Behavioral Abnormality" directly turns upon the question of moral blame that one can contribute to actions. The State of Texas by common law allows mens rea evidence. "We did not limit our holding or reasoning in Jackson to murder prosecution or to one specific mems rea element. We repeat and we reaffirm our holding in Jackson that relevant evidence may be presented which the jury may consider to negate the mens rea element. And this evidence may sometimes include evidence of a defendant's history of mental illness," Ruffin v State, 270 S. W. 3d 586, 596 (Texas

Criminal Court of Appeals 2008) (quoting) Jackson v State 160 S. W. 3d 568, 574 (Texas Criminal Court of Appeals 2005).

When the state utilized its power to define the issue of a complex psychological nature; then had the petitioner reviewed by the terms of the law to assess for the "Behavior Abnormality" at the end of the term of imprisonment. See Texas Health and Safety Code 841.021-841.023. Then only a judge or a jury can determine by law whether the person is a sexually violent predator. See Texas Health and Safety Code 841 .062. Therefore, the evidence of a behavior abnormality can only be assessed by the state and proven by a judge or a jury beyond a reasonable doubt; it is then the type of new exculpatory evidence that meet's the legal standard before it is in fact, evidence at all. Thus, this is the kind of evidence of actual innocence that the court contemplated in Schulp v Delo 513 U. S. 298, 324 - 326.

On a final note both the United States Supreme Court and the Texas Supreme Court would consider the behavior abnormality to be indicative of the "irresistible impulse" test for insanity. In both the majority holding and the descent in Kansas v Hendricks as Justice Thomas explained by abnormality the state is using nomenclature for a term of legal significance that takes in individual's responsibility and competency defining its own terms of insanity and competency. 521 U.S. At 359; and though Justice Breyer dissented based on other grounds, it seems he would have concurred "abnormality does not consist simply of a long course of antisocial behavior, but rather it includes a specific serious, and highly unusual disability to control his actions. The law traditionally has considered this kind of abnormality akin to insanity for purposes of confinement." id at 375. Justice Breyer accorded in Kansas v Crane (here, as in other area of psychiatry, there may be 'considerable overlap between a... defective understanding or appreciation and... [and] ability to control... behavior.'" 534 U.S. 407,415, "quoting" American Psychiatric Association statement on the insanity defense, 140 Am. J. psychiatry 681, 685, (1983) (discussing "psychotic" individuals).

To a degree the Texas Supreme Court considered the same question in determining the legality of its own sexually violent predator statute. The Texas health and Safety Code 841, In re Commitment of Fisher 164 S. W. 3d 637 when the question of Fishers competency was raised the court

stated "indeed, the very nature of civil commitment is that they commit for treatment those who pose a danger to themselves or others because they suffer from a mental disease or defect and are unable to comprehend reality or to respond to it rationally. "id. at 653- 654 (quoting the Missouri Supreme Court holding in State v Kinder, 129 S. W. 3d 5, 8). The Texas Supreme Court had one other specific holding when it decided Fisher, "In Texas, our constitution authorizes the legislature to enact laws providing for commitment of certain individuals. See Texas constitution article I, § 15- a ("The legislature may enact all laws necessary to provide for the trial, adjudication of insanity and commitment of persons of unsound mind ..."). Fisher supra 648, N.11. Therefore, notwithstanding the provision of Texas health and safety code 841.1461 and the constitutional as applied application of the portion of the statute, the Texas court of criminal appeals adoption of the trial court's reasoning to deny habeas relief is in clear contradiction to those holding both this court and the Texas Supreme court.

IV Reason for Granting the Writ

The Texas Court of Criminals appeals decision is in contrary to the other state court of last resort, the Texas Supreme Court and that of the United States Supreme Court. The questions are novel, and an issue of societal importance.

The conversation is always contravened and contentious when a discussion begins with the terms "Sexually Violent Predator" and "Behavior Abnormality". The word naturally gives a person pause. The mind of the issue seems to be random, pursued upon the fancy of the present opinion. The two highest courts arrived at vastly different opinions when considering "What is a Behavior Abnormality?"

One court, Texas Supreme Court, determined a behavior abnormality to be a serious condition, that effects "emotional and volitional capacity" that "predisposed" him to commit sexual violence. To verify petitioner had a behavior abnormality under the statute, the commitment court utilized examples of sexual violence alluding to the fact that they are a pattern of the abnormality itself. See 841.003(1). See also appendix G

The finding of the constitutional validity of the 841 and statutes like it turns on principles. Criminal conduct is only blameworthy when it is a product of free will. Therefore, when the Texas Supreme Court examined the constitutionality of the statute under re commitment of Fisher 164 S. W. 3d 637 the court recognized the civil nature of the law and how the prior conviction was used for evidential purposes. See id at 648. Specifically, the crime is evidence of petitioner's insanity or lack of capacity.

Thus, the natural colloquy begets the question, did the civil commitment of Lonnie Kade Welsh utilizing his crimes as evidence, raise the issue of capacity or insanity, presenting "colorable showing of factual innocence" Kuhlmann v Wilson 477 U. S. 436, 454. Naturally there is a suspicion about the evil mind, a requirement for guilt that it rises to, "constitutional error with new reliable evidence," as the commitment court proved an emotional or volitional capacity disorder , called a behavior abnormality, through the state legal process consisting of " new exculpatory" evidence beyond- a- reasonable doubt. Schulp v Delo 513 U. S.298, 324, See also 841. 062

Though it may seem unethical to wait to produce this evidence until I amortize the debt I owed to society that is a question for another day, today's question is, "in light of the new evidence, 'it is more likely than not no reasonable juror would have found petitioner guilty beyond a reasonable doubt.'" House v Bell 547 U. S. 518, 537 (quoting Schulp Supra at 327).

By that understanding petitioner took the evidence produced in cause no 15-01-659 that resulted in the civil commitment and filed a writ of habeas corpus. The premise was, while laboring under the defect of reason, I was driven irresistibly beyond volitional capacity thereby destroying the will, impelling me to commit the morbidly evil acts of sexual violence. Thus, the controlling disease prevented free-will, to affect seriously my ability to control my actions, separating me by all counts from those who may be held criminally responsible.

After all it was proven under the law of Texas and to the satisfaction of the jury, by the compelling standards of beyond a- reasonable- doubt, that when the crime was committed the mind of the petitioner was in a diseased and unsound state. The civil judgment proves that during the offense the impulse overwhelmed reason, conscious and judgement, irresistible and uncontrollable to make the acts

involuntary. "The volitional incapacity or irresistible impulse test, which surfaced over two centuries ago (first in England and then in this country), asked whether a person was lacking in volition due to a mental defect or illness that he could not have controlled his action." Clark v Arizona 548 U.S. 735, 749; see also id at 753, N.3 (volitional capacity, "is understood to mean the ability to form a certain state of mind or motive, understood or evaluate one's actions or control them").

But when looking at the same evidence the other state Supreme Court, the Texas Court of Criminal Appeals had a vastly different understanding of a "behavior abnormality." The court accepted without answer the criminal courts reasonings that petitioner failed his burden, that a behavior abnormality within its relationship with the crime by directed verdict "does not raise any claims, which if true, entitled him to relief on either ground [,]" "that he lacked the mens rea necessary to commit the crime" or that he did not know "right from wrong" during the actus reus of the crime. See appendix E, F, G. It seems that the reason for the confusion is that the statute was calculated to confuse under the definition of the behavior abnormality.

Though, the application of a behavior abnormality mental state question relating to the prior crime may be novel, the framework is not a new principle in the law. The setting of the contours and established constitutional concepts appear to be well founded. In contrast what is novel is how much a divergence in opinion by the two states high courts, affects by violence to the conceptual understanding of justice. Where the rights of the individual in this case can affect the rights of the whole of society, because the honoring of one judgment would imply the other was obtained by fraud. See Hazel-Atlas Co. v Hartford-empire Co. 332 U. S. 238, 244-245 (and cases cited therein). Should the Texas Court of Criminal Appeals be judicially estopped from taking another position than the Texas Supreme Court based on a behavior abnormality when the commitment court's decision was based on a jury verdict? See New Hampshire v Main 532 U.S. 742, 750. It requires an opinion produced in principle of wisdom, by the most able and experienced individuals who sentiments are carefully hesitant of errors unless they start a rapture towards constitutional extinction. Let me explain....

The Constitution in defining a substantive right normally takes it understanding by the meaning of the constitution when it was drafted. It is now settled that the first eight amendments are incorporated within the Fourteenth Amendment. As the court stated in Ford v Wainwright the eighth amendment at least "embrac[es], at a minimum, those modes or acts of punishment that had been considered cruel and unusual at the time that the Bill of Rights was adopted." 477 U. S. 399, 405 (emphasis added)

The founders understood that punishment is deserved by a wrong doer only when his acts was a conscious choice unimpaired and unlabored free-will. Therefore, the common law had established at the time the Bill of Rights was adopted "the borderline of punish ability," so as to avoid "deal[ing] harshly with any unfortunate victim of a desired diseased mind, acting without the light of reason or the power of volition." Parson v State, 81 Ala 577, 594, 2 SO. 858, 865 (1886).

The punishment of the volitional impaired clearly violates the proscription within the amendment. The infliction of punishment on the mentally ill is inapposite it to the eighth amendment finding support, "Whether its aims be to protect the condemned from fear and pain without comfort of understanding, or to protect the dignity of society itself from barbarity of exacting mindless vengeance," the purpose of holding, "the guilty of offending against any law... can never justify be imputed to those who are either in uncapable of understanding it, or of conforming themselves to it." Ford supra at 410; W. Hawkins, a treatise of the pleas of the Crown 1, N.59 (1716). (Citations quoted in order they appear). Though Ford spoke to a different degree it is implicitly the same in kind.

Historically, the criminal justice system has placed a high standard of proving every element of the offense beyond a reasonable doubt. As justice Harlan wrote, "In this context, I viewed the requirement of proof beyond a reasonable doubt in a criminal case as bottomed on a fundamental value determination of our society that is far worse to convict an innocent man than to let a guilty man go free." In re Winship 397 U.S. 358,372.

Therefore, when the state outlined, "the ancient requirement of a culpable state of mind [,]" it did so by defining the terms intentionally and knowingly within its Penal Code. Morisset v United States 342 U. S. 246, 250; See Texas Penal Code 6. 03... This being:

"The contention that an injury can amount to a crime only when inflicted by intention is no provincial or transient notion. It is a universal and persistent in nature systems of law as belief in freedom of the human will and it consequent ability and duty of the normal individual to choose between good and evil." Morisset supra at 250.

The notion of emotional or volitional capacity disorder during the actus reus of a crime belies the notion of vicious will or evil intent. It suggests that petitioner was in fact innocent of the crime because there was no volition; therefore there is no mens rea for proof beyond a–reasonable-doubt of every fact necessary to constitute the crime, negating the necessary mental element. In re Winship supra at 364.

It is inextricably the concurrence of actus reus and Mens Rea that leads to the imputation of criminal liability. This theory has its basis in Roman law with the latin maxi, "Actus non facit reum nissy mens sit rea." To put another way and act is controlled by comparing and contrasting volition to intent. Establishing culpability based on the existence of volition appears to assume the volition also caused the act.

That assumption creates the mind/ body problem that has long been unresolved philosophical debate indicating that the question should not be swept aside lightly. The state of Anglo-American law forms such a distinction as in every serious crime consist of element of the mind/ body split were both must function to the intended purpose to fulfill the promise of beyond a reasonable doubt. Thus, the Texas legislature in its collective wisdom solves the question for us. Its definition and definitive qualities that coined the term behavior abnormality coupled with the jury verdict on the issue is dispositive within the given answer. Though problems with the nomenclature seems to be the sticking point for the contrary opinions of what the behavior abnormality is between the civil and criminal law.

Though this point should not be lost in the shuffle, there can be no preventative detention without a serious mental disease. A disease so serious that I must be considered "distinguished" from the typical criminal recidivist. In essence the criminal conduct is only blameworthy when it is a product of free-will. see Hall, General Principles of Criminal Law 166-167 (1947). If that is true, then why must I suffer the

stigmatization of the crime and the commitment when it was proved I had no volition? "Blackstone said "furiosus furore solum punitur." (a madman is punished by his madness alone). 2 William Blackstone commentary of the laws of England 24. (1803).

In an elementary sense the terms volitional capacity as a product to "predispose" the individual to the sexual offense undermines the ascription of criminal responsibility whenever the person acted under the state defined behavior abnormality. Retrospectively, the commitment naturally cast suspicion upon the validity of the conviction, and vice versa. So, the question begs to be answered, which one is right?

The casual connection to the emotional and volitional capacity disorder of the behavior abnormality and the sexual crimes is explicit in their relationship. As the state legislative power to define criminal responsibility in civil commitment is an ethical duty:

> The doctrines of actus reus, mens rea, insanity mistake, justification, and duress have historically provided the tools for a constantly shifting adjustment of the tension between the evolving aims of the criminal law changing religious moral, philosophical and medical views of the nature of man. This process of adjustment has always been thought to be the province of the state. Montana v Egelhoff 518 U.S. 37, 56.

Petitioner raising the points of challenge to his conviction by lack of mens rea and/ or insanity was by the understanding that Texas must have incorporated new doctrines of the "Behavior Abnormality" into those two legal categories. The premise being that in order for the "SVP" law to conform to well settled constitutional principles there must be a showing that he is not only mentally ill, but the illness distinguishes him from those amoral recidivist who can be held morally liable when he commits acts of sexual violence. How else can he be distinguished but by either mens rea or insanity? Setting aside mens rea for now, did the state expand its insanity law?

Stated above this court recognized the nature of the law to be within the concepts of insanity. Both Justice Thomas speaking for the majority and Justice Briar for the dissent in Kansas v Hendricks agree on this point. The Texas Supreme Court did not label the test volitional insanity it does speak of cognitive impairment and incompetency. In re commitment of Fisher the court identifies the purpose of

the civil commitment and the redundancy of having a competency hearing citing other state court opinions and specifically citing "they suffer from a mental disease or defect and are unable to comprehend reality or to respond to it rationally." id at 653-654. This language underscores how cognitive impairment is understood to be a disorder that undermines a person's ability to perceive reality accurately. See J. Dressler, understanding criminal law § 25.03, at 295, N2 (1987).

This is consistent with the right/wrong test the state has promulgated in Texas Penal Code 8.01, furthermore, typically the undefined emotional capacity would carry the meaning found in the Texas Health and Safety Code 574.035 of "Emotional Disorders" for the commitment of those who cannot differentiate right from wrong. "Although the presumption is most commonly applied to terms appearing in the same enactment it is equally relevant when Congress uses the same language in two statutes having similar purposes." United States v Castleman 572 U.S. 157,174 (J. Scalia concurring) (quoting Smith v City of Jackson 544 U.S. 228,233) (citation omitted).

The separation of the question of capacity and insanity is by design, as stated by the then Justice Rehnquist in his concurring opinion in Mullney v Wilber 421 U.S 684,706, "the existence or non-existence of legal insanity bears no necessary relationship to the existence or none-existence of the required mental element of the crime."

As stated in Sanders, Voluntary Acts, and the Criminal Law: Justifying Culpability Based on the Existence of Volition 49 U. Pitt. Rev. 443,445 (1988).

"Mens rea seems to require volition. If an act (or Omission) is not even voluntary, it could not have been done (or omitted) with the degree of intent required for mens rea."

It would seem the likely interpretation of mens rea and for the purpose of this discussion, the prospect follows the sexual offense both intent and knowing under the law of conscious desire is missing because of the lack of volitional capacity by the abnormality; you're missing the alchemist element to cook culpability, you have A the act, but B is gone the mind, the needed ingredient. See generally D. Hume, An Inquiry Concerning Human Understanding§§ 4-7(C. Hendel Ed 1955).

It would be difficult to hold reasoning skills of a person afflicted with such an illness as described In re Commitment of Fisher and contribute the behavioral abnormality that petitioner has, that distinguishes him beyond doubt by a trial, that he cannot be in the same context as a typical offender, then dismiss the determining factor that the petitioner couldn't have chosen to in-gage in the criminal act and therefore did not intentionally or knowingly. Normally a person is "entitled to an acquittal of the specific crime charged if upon all the evidence there is reasonable doubt where he was capable in law of committing crime." United States v Davis 160 U.S. 469,484. The Texas Court of Criminal Appeals believe this to be the common law allowing you to submit evidence of mens rea capacity, in Jackson v State and Ruffin v State (see above) it just doesn't believe that way when viewing the behavioral abnormality.

The problem seems to be the result of forcing a continuum of, or at least natural tripartite division of the disorder based on willed-unwilled, volitional-unintentional, sane or insane analysis that the two highest courts cannot agree. So, what do I do?

It has been recognized as an age-old problem, I find guidance within the Talmudic where the courts of Texas would contemplate benign justifications in their asserted roles and judgements. As they judged separately, they are correct, but that's where Antoninus turns to the Rabbi and says:

> "The body and soul can both free themselves from judgment. Thus, the body can plead: The soul has sinned, [the proof being] that from the day it left me I lie like a dumb stone in the grave [powerless to do aught]. Whilst the soul can say: The body has sinned, [the proof being] that from the day I departed from it I fly about in the air like a bird [and commit no sin]." He replied, "I will thee a parable, to what may this be compared? To a human king who owned a beautiful orchard which contained splendid figs. Now, he appointed two watchmen therein, one lame and the other blind, [One day] the lame man said to the blind, 'I see beautiful figs in the orchard. Come take me upon thy shoulders, that we may procure and eat them.' So, the lame bestrode the blind, procured, and ate them. Sometime after, the owner of the orchard came and inquired of them, 'where are those beautiful figs?' The lame man replied, 'Have I the feet to walk with:' The blind man replied, 'have I the eyes to see with?' What did he do? He placed the lame upon the blind and judged them together. So will the Holy One, blessed be he, bring the soul, [re]place it in the body, and judge them together."

Babylonian Talmud, order Nezikin, Tractate Sanhedrin, 9la-91b (1. Epstein trans. 1935) (foot notes omitted) (insertions by Epstein).

The passage not only expresses the problem, it provides the seeds for the solution. It seems when judged separately there is no problem with the rationality or the functioning of the law, but when they are judged together a paradoxical anomaly exits.

Can it reasonably be considered that after adjudication of my criminal sentence, I only now possess the behavioral abnormality? What is the justification then to use my prior convictions if not to show I had the behavioral abnormality when the act occurred? So, which one is the chicken and which on is the egg?

What legal doctrine carries the most weight: How can it not be new evidence to collaterally attack the conviction? What separates me from a typical criminal if it is not aspects of mens rea or insanity?

The question in the legal context is under what circumstances would a behavioral abnormality excuse the conduct of sexual violence. It seems explicitly clear that the light of one judgement cannot live in the shadow of the other. The different interpretations require constitution reconciliation.

V Prayer

Wherefore, premise is considered, the spirt of Providence and common sense inspired the production to humbly move the Court to grant the Petition for Certiorari or any relief otherwise entitled too.

Respectfully Submitted, Lonnie Kade Welsh

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