

20-5315

United States Court of Appeals
for the U.S. Supreme Court

Robert L. Stabnow,
Petitioner,

District Court File No. 19-cv-1539 (PAM/TNL)

vs.

Eighth Circuit Appeal File No. 19-3453

Jodi Harpstead; DHS
Commissioners Office,
Respondent.

U.S. Supreme Court Appeal File No. _____

ORIGINAL

Petition of Certiorari to the U.S. Supreme Court and Notice of Appeal of Order
Denying Certificate of Appealability and Dismissal of Appeal for writ of Habeas
Corpus Review

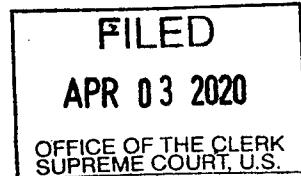


Table of Contents

Heading of section	Page
Table of Contents	2-3
Table of Authorities	4-5
Introduction	6
Notice of Appeal	6
Jurisdiction	6
Venue	6
Background	6-7
Issues and Questions on Appeal	7-8
Facts	8-9
Summary of Arguments	10
A. Mr. Stabnow Did not fail to Exhaust his State Court Remedies where no Remedies Exist.	10-12
B. Mr. Stabnow is Entitled to Habeas Relief as he has Been Under Continued Punishment for a Two Year Prison Sentence Since 2007 That has Been Fully Served Because The MSOP is a Prison and not a Mental Health Institution.	12-13
C. Did The District Court err in not Reviewing Mr. Stabnow's Evidence That the MSOP is in Fact a Minnesota Prison That Operates Under Color of Civil Commitment?	13-14
D. Did The District Court Err by not Following the Precedent Outlined in the Eighth Circuit Court or the Supreme Court of the United States surrounding Habeas Corpus Review.	14-16
E. Is The State of Minnesota Allowed to Change Legislation when Someone gets out of MSOP to Counter well Established Case Law.	16-17

F. This Court Should Hear the Appeal and Grant a Certificate of Appealability and Certiorari.	17-20
Conclusion	20
Decision and opinion of the Minnesota District Court Printed from Lexis	Appendix 1
Decision of the Eighth Circuit Court Separate Document	Appendix 2

Table of Authorities

Statutes:	Page
Title 28 U.S.C. §1254	6
Title 28 U.S.C. §1253	6
Title 28 U.S.C.S. §2241	6
Title 28 U.S.C.S. §2254	6
Title 28 U.S.C.S. §2403 (b)	
Title 28 U.S.C. § 1746	20
State Court Cases:	
In Re Fugelseth 907 N.W.2d 248, 253 (Minn. App. 2018)	16
Call v. Gomez, 535 N.W.2d 312, 319 (Minn. 1995)	8 & 9
Federal Court Cases	
Weaver v. Graham, 450 U.S. 24, 29, 67 L. Ed. 2d 17, 101 S. Ct. 960 (1981)	19
Seling v. Young, 531 U.S. 250, 265, 121 S. Ct 727, 148 L. Ed. 2d 734 (2001)	19
Medallic Art Co. v Novus Mktg., Inc. 1999 U.S. Dist. LEXIS 12605; Copy L Rep (CCH) P27,948Copy. L. Rep. (CCH) P27,948 99 Civ. 502 (JSM) (US District court of the Second Circuit)	17
Baxstrom v. Herold 383 US 107, 15 L Ed 2d 620, 86 S Ct 760	14
Kansas v. Hendricks 521 US 346, 138 L Ed 2d 501, 117 S Ct 2072	13 & 15
Youngberg v. Romeo, 457 U.S. 307,321-22, 102S. Ct. 2452,73 L. ed. 2d 28 (1982)	12 & 18
Wilwording v. Swenson 30 L Ed 2d 418, 404 US 249 (Head Notes)	11

Chitwood v. Dowd 889 F.2d 781; 1989 (8 th Cir)	11
Granberry v. Greer, 481 U.S. 129, 131, 95 L. Ed. 2d 119, 107 S. Ct. 1671 (1987)	10

I. Introduction

1. Robert L. Stabnow is a civil detainee at the Minnesota Sex Offender Program (MSOP) and is seeking Certiorari to the Supreme Court of the United States on direct appeal from a Judgment entered by both the District Court of Minnesota and the Eighth Circuit Court of Appeals. This case involves a constitutional challenge to a state statute and Pursuant to The Rules of this Court Title 28 U.S.C.S. §2403 (b) does apply and the attorney general has been served.

II. Notice of Appeal

2. Mr. Stabnow by service of this petition hereby notifies of his intentions to appeal to the United States Supreme Court through the writ of certiorari

III. Jurisdiction

3. This court has Jurisdiction as Mr. Stabnow has appealed to the Eighth Circuit Court of Appeals pursuant to Title 28 U.S.C. §1254

IV. Venue

4. This court has venue as Mr. Stabnow has appealed to the Eighth Circuit Court of Appeals pursuant to Title 28 U.S.C. §1253

V. Background

5. Mr. Robert L. Stabnow filed a petition pursuant to Title 28 U.S.C.S. §2241 and §2254 on June 13 2019 in the federal district court for the district of Minnesota after a change in the discharge criteria was made retroactive to his then active

petition for relief from his commitment pursuant to Minnesota Statute 253D's previous Discharge standard. After the change was put into effect Mr. Stabnow withdrew his petition because it became impossible for him to achieve the release that he was seeking.

6. On July 22, 2019 Mr. Stabnow amended the petition that he filed so he could properly identify the correct respondent in the petition and include three (3) exhibits of evidence that he thought would be the most convincing for the court.
7. On October 11th, 2019 an order of the U.S. District Court for the District of Minnesota adopted the Report and Recommendation denying amended Petition for Habeas relief pursuant to 28 USC §2241 and §2254 for failing to exhaust state court remedies where no remedies really exist because of Political influence over the discharge process.
8. On November 5, 2019 Mr. Stabnow appealed the decision from the district court to the Eighth Circuit Court of appeals.
9. On February 27, 2020 The Eighth Circuit dismissed the appeal and denied a certificate of Appealability
10. This Appeal follows

VII. Facts

16. On April 17, 2018 Kirk Alan Fugelseth prevailed in being granted a full discharge from the MSOP based on the Discharge standard outlined in Call v. Gomez 535 N.W.2d 312 (Minn. 1995).³
17. In 2018, shortly after the court in the Fugelseth commitment made its decision, the Minnesota legislature changed the criteria for release from commitment under Statute 253B.185/253D⁴ and made the language of the statute to deviate from the established constitutional standard outlined in Call v. Gomez 535 N.W.2d 312 (Minn. 1995).
18. This change in the law was made retroactive to Mr. Stabnow while he had an active petition for release pending and made release nigh impossible to achieve.
19. Mr. Stabnow seeing that this change took place withdrew his petition for review as he could not meet the extremely stringent guidelines of the new standard.
20. He filed a petition for Writ of Habeas Corpus in federal court because Mr. Stabnow was not protected from the biasedness of the Minnesota Legislative

³ This case from Minnesota was the prevailing constitutional standard

⁴ See Exhibit 2 the comparison of The Statute from before its revision and after the revision.

VI. Issues and Questions on Appeal

11. Was the District Courts and Eighth Circuit denial and dismissal of petition for habeas relief pursuant to Title 28 USC §2241 and §2254 for failure to exhaust state remedies proper?
12. Was the denial of motion for Summary Judgment proper?
13. Were the lower courts obligated to hear the petition on the Merits of the case in light of the evidence filed with the Amended Petition?
14. Did the District Court fail to follow Eighth Circuit and US Supreme Court Precedent on the Exhaustion Requirement?
15. The Petitioners Exhibits 1-3 outline the state's predisposition to punish MSOP detainee's by Identifying the MSOP as a Prison¹, the Legislature's biasedness of the population of MSOP detainees based on the fact that they change the Law whenever there is a case that would allow for MSOP detainees to be released, and not following the presiding Supreme Court President in Minnesota that was reinforced by the decision in "In Re Fugelseth."² Mr. Stabnow would like to know if this is proper and allowed under presiding precedent in this great court?

¹ See Exhibit 1

² See Exhibits 2 and 3

Body in their application of the new standard to his petition for review under the previous discharge standard.

VIII. Summary of Arguments

21. Mr. Stabnow argues that the district Court erred in its decision to deny habeas relief in that: (1) Mr. Stabnow failed to exhaust his state court remedies; (2) That Mr. Stabnow was not entitled to Habeas Relief; (3) The District Court by all appearances did not review Mr. Stabnow's evidence that the MSOP is in fact a Minnesota Prison that operates under a Civil code in the Probate division of Minnesota's Laws; and (4) The District Court erred by not following the precedent outlined in the Eighth Circuit Court or the Supreme Court of the United States. (5) The State of Minnesota is not allowed to punish Civil Detainees confined to the MSOP. (6) This court should hear the Appeal and grant a certificate of Appealability and Certiorari.

a. Mr. Stabnow Did not fail to Exhaust his State Court Remedies where no Remedies Exist.

22. The remedies that the District Court directed Mr. Stabnow to exhaust⁵ do not hear constitutional challenges to the statute. So the District Court erred when It dismissed the request for habeas relief on the grounds that Mr. Stabnow did not exhaust his State Court Remedies. This court has consistently

⁵ See Report and Recommendation that was adopted by the Honorable Paul A Magnuson

held the State Remedies that do not provide relief need not be exhausted. “Failure to pursue available state remedies is not an absolute bar to appellate consideration of habeas corpus claims.” *Granberry v. Greer*, 481 U.S. 129, 131, 95 L. Ed. 2d 119, 107 S. Ct. 1671 (1987). “Courts may grant habeas relief in special circumstances, even though the petitioner did not exhaust state remedies. Determining whether such special circumstances exist is a factual appraisal for the trial court to decide, subject to appropriate appellate review.” *Chitwood v. Dowd* 889 F.2d 781; 1989 (8th Cir). Commitment to the MSOP is Politically charged and many of the States Politicians (including Judges) get elected due to promises of harsher punishments of the Sex Offenders that rape and molest children.

“Under the requirement of 28 USC § 2254 that a petitioner for federal habeas corpus must have exhausted his remedies available in the state courts, state prisoners whose state habeas corpus petitions have been dismissed and who seek federal habeas corpus on the grounds of living conditions and disciplinary measures at the state penitentiary where they are confined need not pursue such state court remedies as injunction, prohibition, mandamus, declaratory judgment, or relief under a state administrative procedure act as a prerequisite to petitioning for federal habeas corpus, where (1) it is a matter of conjecture whether the state would have heard the prisoners' claims in any of the suggested alternative proceedings; (2) no available procedure was indicated by the state Supreme Court in earlier cases; and (3) no single instance, regardless of the remedy invoked, had been referred to in which the state's courts have granted a hearing to state prisoners on the conditions of their confinement” ***Wilwording v. Swenson* 30 L Ed 2d 418, 404 US 249 (Head Notes).**

23. As Mr. Stabnow argued before the Eighth Circuit in his request for appeal the remedies that the district court wants him to exhaust do not hear nor can

they decide Constitutional challenges to the Law. The remedies outlined in statute are only to determine if Mr. Stabnow can be safely released to the community and not the validity of the Commitment Law itself. "The panel may not consider petitions for relief other than those considered by the special review board from which the appeal is taken" quoting Minnesota Statute 253D.28 subd.3 and "For the purposes of this section, "reduction in custody" means transfer out of a secure treatment facility, a provisional discharge, or a discharge from commitment" quoting 253D.27 subd.1 (b). The process does not allow for review of a constitutional challenge to the statute.

b. Mr. Stabnow is Entitled to Habeas Relief as he has Been Under Continued Punishment for a Two Year Prison Sentence Since 2007 That has Been Fully Served Because The MSOP is a Prison and not a Mental Health Institution.

24. Mr. Stabnow's conditions of confinement amount to punishment and in **Youngberg v. Romeo, 457 U.S. 307,321-22, 102S. Ct. 2452,73 L. ed. 2d 28 (1982)** this court said: "[p]ersons who have been involuntarily committed are entitled to more considerate treatment and Conditions of Confinement than criminals whose conditions are designed to punish." Mr. Stabnow's prison sentences are fully served and satisfied, and he asks the court can Minnesota continue to punish him through the guise of civil commitment and does this punishment rise to the level of Cruel and Unusual punishment since it has been going on for 13 years? Mr. Stabnow believes that it does because his punishment for his crimes is supposed to be over with. Minnesota has, Mr.

Stabnow claims, erected a civil commitment scheme that amounts to punishment beyond what the criminal courts have issued under valid criminal sentences.⁶ Mr. Stabnow asks the Court is this proper under presiding case law or Court precedent?

c. Did The District Court err in not Reviewing Mr. Stabnow's Evidence That the MSOP is in Fact a Minnesota Prison That Operates Under Color of Civil Commitment?

25. MR. Stabnow presented evidence from Minnesota's laws that identify the MSOP as a prison and not a mental institution that civil commitment is generally associated with. Mr. Stabnow raises the question is this proper under Court precedent in SVP statutes? This Court up held the Kansas SVP Law because it committed individuals to a setting that was similarly arranged to other Mentally Ill individuals see Kansas v. Hendricks 521 US 346, 138 L Ed 2d 501, 117 S Ct 2072 where this court said:

"For purposes of determining whether a state statute providing for the civil commitment of sexually violent predators violates the double jeopardy or ex post facto provisions of the Federal Constitution, a state cannot be said to have acted with punitive intent where the state has (1) disavowed any punitive intent, (2) limited confinement to a small segment of particularly dangerous individuals, (3) provided strict procedural safeguards, (4) directed that confided persons be segregated from the general prison population and **afforded the same status as others who have been civilly committed**, (5) **recommended treatment if such is possible**, and (6) **permitted immediate release upon a showing that the individual is no**

⁶ See Minn. Stat. 253D.09 where Petitions initiate in Criminal and Penal codes of the States Laws

longer dangerous or mentally impaired.”

26. Mr. Stabnow is not afforded the same rights and status as others that are civilly committed. Minnesota has intentionally stripped Mr. Stabnow of any protections that would keep him from being mistreated by the officials that are tasked with treating and safe keeping him.⁷ Mr. Stabnow begs this Court to decide if this practice is proper under its well established precedent in Civil Commitment Statutes.⁸

d. Did The District Court Err by not Following the Precedent Outlined in the Eighth Circuit Court or the Supreme Court of the United States surrounding Habeas Corpus Review.

27. Mr. Stabnow in his initial petition highlighted case law that established that he was entitled to relief under Habeas Corpus as the district court seems to have ignored not only evidence but also precedent that was established by this court over a more than 100 year history. Is this allowed and proper practice in the Judicial system? Does this give Mr. Stabnow his fair day in court to find relief from an unconstitutional statute? Mr. Stabnow’s evidence points out that the State of Minnesota does not commit sex offenders to a mental institution but rather to a prison and this court in Baxstrom v. Herold 383 US 107, 15 L

⁷ See Minnesota Statute 626.5572 Subd. 21 where MSOP detainees are not classed as mentally ill and receive no protections under the State’s Maltreatment Protections Law known as **§626.557 Reporting of Maltreatment of Vulnerable Adults**.

⁸ See United States v. Comstock; Kansas v. Hendricks; Addington v Texas; Allen v Illinois Baxstrom v Herold; Foucha v Louisiana; Minnesota ex rel. Pearson v Probate Court of Ramsey Cty;

Ed 2d 620, 86 S Ct 760 said:

“the decision whether to commit that person to a hospital maintained by the Department of Corrections or to a civil hospital is completely in the hands of administrative officials, whereas all others civilly committed to hospitals maintained by the Department of Corrections are committed only after judicial proceedings have been held in which it is determined that the person is so dangerously mentally ill that his presence in a civil hospital is dangerous to the safety of other patients or employees, or to the community, the statutory classification not being justifiable on the basis of factual similarities between Dannemora and civil hospitals under the jurisdiction of the Department of Mental Hygiene where the state legislature had created functionally distinct institutions.”

28. Minnesota has two separate institutions for civil commitment of dangerous individuals one such institution is the MSOP and the other is the Minnesota Security Hospital (MSH). The latter is for the commitment of the Mentally Ill and Dangerous who are afforded all kinds of protections and safeguards against being abused and mistreated by state employees, and commitment to the MSOP is the total and exact opposite because the MSOP is identified in the states Laws as a correctional facility.⁹ The MSOP is classified under the same laws as Minnesota’s Department of Corrections so a commitment to the MSOP is in effect another prison sentence that is under the color of civil commitment. Mr. Stabnow asks this court if this is acceptable

⁹ See Minn. Stat. §351.91 Covered Correctional Service

under the practice of Civil Commitment Statutes?¹⁰ Minnesota has other hospitals around the state that are capable of treating the dangerously mentally ill but never utilizes these settings for sex offenders but rather sends them to a prison institution for extended incarceration on their sentences from criminal court under the color of Civil Commitment.

e. Is The State of Minnesota is Allowed to Change Legislation when Someone gets out of MSOP to Counter well Established Case Law.

29. The last question that Mr. Stabnow asks this court to address is: Can the State's Legislative Body change the Law's discharge criteria in order to cause well established case law to be voided? In Mr. Stabnow's petition for Habeas relief he pointed out that the legislature changed the discharge criteria after an individual was granted a full discharge from his commitment by the commitment acts discharge process.¹¹ The Legislature adopted a change in the discharge criteria that voided established case law by Minnesota Courts after a detainee from the MSOP was granted a full discharge from his commitment.¹² This change in the law was then applied to Mr. Stabnow's then pending petition for review of his civil commitment retroactively. From what Mr.

¹⁰ In Kansas v. Hendricks Civil Commitment of SVP was allowed because the law committed the individual to a Hospital/Mental Health type setting; the same as other civilly committed individuals.

¹¹ See The exhibit 2 which has Statute 253D prior to In Re Fugelseth being decided from 2014 and after it was decided in 2018.

¹² The case in question is In Re Fugelseth 907 N.W.2d 248; 2018 Minn. App.

Stabnow was able to gather Legislation and Case Law should work together so that justice can be upheld in a fair and reasonable manner.

“In most cases, the result which the law requires is one that comports with the judge's sense of justice. If one considers the facts and asks, "What should the result be in this case," the answer is usually what existing legislation and case law require. This is one of those rare cases where the Court is persuaded that as a matter of logic and justice the Defendants should prevail, but the requirements of the Copyright Act compel a different result” **Medallie Art Co. v Novus Mktg., Inc. 1999 U.S. Dist. LEXIS 12605; Copy L Rep (CCH) P27,948Copy. L. Rep. (CCH) P27,948 99 Civ. 502 (JSM) (US District court of the Second Circuit).**

30. Minnesota has a history of targeting and hating sex offenders as part of the political agenda. Many of the state's law makers will go on TV when a high profile offender is being looked at for reduction in custody or discharge and make statements like: “We are going to fight against this monster getting released and if necessary we will change the law so that no one will ever get out of the MSOP.” How can Mr. Stabnow be given a fair review of his commitment when most of the State's law makers are elected based on their hatred of sex offenders? And how can he achieve release when the law makers can just change the law to void established case law that would help him achieve release.

f. This Court Should Hear the Appeal and Grant a Certificate of Appealability and Certiorari.

31. In Rule 10 of this courts rules it is well established that the power to grant Certiorari is within the sole discretion of the court and Mr. Stabnow hopes and

prays that this court will choose to hear his plea for relief from his continued punishment. Mr. Stabnow is not a lawyer and has had to represent himself throughout this process and has done his best to follow all of the proper procedures and he has had wall after wall placed in front of him. The courts did not grant a certificate of appealability because Mr. Stabnow did not argue that one should be brought, he instead argued for summary judgment in his petition for Writ of Habeas Corpus because the Respondent did not oppose his claims in their response to the petition. So far as Mr. Stabnow can tell he has presented a case that has merit and the courts have summarily denied him review and thus denied him the right to be freed from being held by an unconstitutional statute. Mr. Stabnow is not an expert in the law but to him this seems to be biasedness of the courts and asks is it so? These lower courts have effectively said to Mr. Stabnow that he has no right to not being held under an unconstitutional law that is meant to punish him again for his crimes that he has served a full prison sentence for.

32. In **Youngberg v. Romeo**, 457 U.S. 307, 321-22, 102 S. Ct. 2452, 73 L. ed. 2d 28 (1982) this court said: "persons who have been involuntarily committed are entitled to more considerate treatment and Conditions of Confinement than criminals whose conditions are designed to punish." Mr. Stabnow does not have millions upon millions of dollars to hire an entire legal team of lawyers that will fight to protect his rights and is faced with contending with the

Attorney General's Office that has an unlimited amount of resources upholding the law. The way that Mr. Stabnow is disparaged in his commitment is only meant to deny him meaningful access to the courts. He has access to a law computer but no help with formatting his briefs, fine tuning his arguments, nor how to best present his case before the court so that he is heard.

33. In *Seling v. Young*, 531 U.S. 250, 265, 121 S. Ct 727, 148 L. Ed. 2d 734 (2001); The Supreme Court cited the 14th Amendment of the constitution saying: "*The due process guarantee of the Federal Constitution's Fourteenth Amendment requires that the conditions and duration of the civil confinement of a sexually violent predator under a state's statute bear some reasonable relation to the purpose for which persons are committed under the statute*". Minnesota's actions in how they change the law deny what this court has outlined as proper and just in a state's Civil Commitment Statute. When the law is changed how can the commitment continue to *bear some reasonable relation to the purpose for which persons are committed*. Mr. Stabnow is not sure how his commitment 13 years later with no observable behaviors that relate to his initial commitment is still reasonably related to his initial commitment. Is this Constitutional according to the courts previous rulings on sex offender civil commitment laws?

34. And in *Weaver v. Graham*, 450 U.S. 24, 29, 67 L. Ed. 2d 17, 101 S. Ct. 960 (1981) "*Ex Post Facto Clause was meant to prevent arbitrary and*

potentially vindictive legislation.” Is Minnesota’s law Arbitrary and vindictive legislation? Mr. Stabnow seeks certiorari to the supreme court humbly requesting that this great court of the United States decide the issues raised in this petition and determine if the law in Minnesota as it is currently applied to Mr. Stabnow constitutional.

IX. Conclusion

35. For all of the above reason Mr. Stabnow believes that his Petition for Writ of Certiorari should be granted by this court and his appeal heard and the issues decided by this court.

36. This Petition for Writ of Certiorari for appeal is filed by placing it in the designated outgoing mail box on Monday May 18, 2020.

37. I Robert L. Stabnow declare that all of the foregoing statements are true and correct under penalty of perjury pursuant to Title 28 U.S.C. § 1746.



Robert L. Stabnow
Appearing Pro Se
1111 HWY 73
Moose Lake MN 55767