20-7504

No. _____

In the

Supreme Court of the United States

RAY A. GOUGH,

Petitioner

v.

DANIEL Q. SULLIVAN, Warden

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
For the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

RAY A. GOUGH R00646
BMRCC 1-B-51
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Petitioner Pro Se

OCTOBER 26, 2020

QUESTIONS PRESENTED

(1) Whether proceedings under the Illinois Sexually Dangerous Persons Act, which may result in incarceration for an indeterminate and possibly lifelong term, are "criminal prosecutions", within the meaning of the Sixth Amendment's guarantee of a speedy trial.

(2) Whether, in a *habeas corpus* proceeding under 28 U.S.C. §2254, the requirement of a Supreme Court precedent incorporated in §2254(d)(1) for decisions contrary to clearly established Federal law, applies likewise to §2254(d)(2) for decisions based on an unreasonable determination of the facts, despite the clear language of the statute to the contrary.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Ray A. Gough respectfully prays that a writ of certiorari issue to review the order of the United States Court of Appeals for the Seventh Circuit, entered September 14, 2020, in *Gough v. Sullivan*, No. 20-1088, denying his request for a certificate of appealability from the judgment of the United States District Court for the Southern District of Illinois, and denying his request for the appointment of counsel.

OPINIONS BELOW

The order of the panel, consisting of Judges Wood and Scudder, of the United States Court of Appeals for the Seventh Circuit, appears at Appendix A to the petition, and is unpublished. The judgment and memorandum and order of the United States District Court appears at Appendix B to the petition and is unpublished.

JURISDICTIONAL STATEMENT

The Court of Appeals entered its order on September 14, 2020. No petition for rehearing or for rehearing en banc was filed. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

U.S. CONST. amend VI

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial...."

U.S. CONST. amend. XIV

"...nor shall any person...be deprived of life, liberty, or property, without due process of law...."

28 U.S.C. §2254(d)

An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim–

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) 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.

28 U.S.C. §2253(c)

(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from–

(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court....

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

STATEMENT OF THE CASE

This petition arises from the order of the court of appeals entered

September 14, 2020, denying petitioner's request for a certificate of appealability from the district court's judgment entered December 17, 2019, dismissing petitioner's *habeas corpus* petition and denying his request for a certificate of appealability.

Mr. Gough's *habeas corpus* petition had been filed following his State court adjudication as a sexually dangerous person under the Illinois Sexually Dangerous Persons Act,725 ILCS 205/0.01 *et seq.*, and the exhaustion of his appeals in State court. The *habeas corpus* petition alleged that Mr. Gough's Sixth Amendment right to a speedy trial had been violated in the State court proceedings by a ten-year delay in bringing him to trial, and by a decision that was based on an unreasonable determination of the facts in light of the evidence presented.

The district court dismissed the *habeas corpus* petition, and both the district court and the court of appeals denied Mr. Gough's requests for a certificate of appealability, upon a finding that there had been no substantial showing of the denial of a constitutional right, pursuant to 28 U.S.C. §2253(c)(2).

The district court's jurisdiction was based upon 28 U.S.C. §2241 and §2254. The court of appeals' jurisdiction was based upon 28 U.S.C. §1291.

REASONS FOR GRANTING THE WRIT

Neither the court of appeals nor the district court examined the merits of Mr. Gough's claims. Rather, the finding that Mr. Gough's constitutional rights had not been violated was based on the absence of a Supreme Court

precedent holding that persons prosecuted under purported civil commitment statutes such as the Illinois Sexually Dangerous Persons Act (the "Act"), have a Sixth Amendment right to a speedy trial.

The evidence related to Mr. Gough's speedy trial claims was largely undisputed. In 2000, Mr. Gough was found to be a sexually dangerous person under the Act, following a jury trial in the Circuit Court for the Fifteenth Judicial Circuit, Ogle County, Illinois. On appeal, the case was remanded in March of 2004. More than ten years later, after another jury trial, Mr. Gough was again found to be a sexually dangerous person in November of 2014. During the entire ten-year period after remand, Mr. Gough was incarcerated in the Ogle County jail.

Mr. Gough appealed, arguing *inter alia* that his right to a speedy trial had been violated, primarily because much of the 10-year delay in bringing him to trial resulted from the trial court's refusal to allow Mr. Gough to represent himself, and Mr. Gough's dissatisfaction with his court-appointed attorneys. It was undisputed that Mr. Gough had made numerous unequivocal requests, and had filed multiple motions, seeking to represent himself over a period of three years until finally being allowed to do so, and that Mr. Gough was never found to be incompetent to waive his right to counsel, or to have forfeited his right to represent himself by his conduct.

The Illinois Appellate Court affirmed, basing its analysis on *Barker v. Wingo,* 407 U.S. 514 (1972), made applicable to the State court proceedings by the due process clause of the Fourteenth Amendment, *In re Detention of Hughes,* 346 Ill. App. 3d 637, 646 (2004), and finding that

the trial court's refusal to allow Mr. Gough to represent himself for three years should be charged to Mr. Gough rather than the State because the court's decision was "informed" by Mr. Gough's mental capacity and obstructionist conduct, despite the absence of any such findings by the trial court. The Illinois Supreme Court denied Mr. Gough's petition for leave to appeal.

Having exhausted his State court appeals, Mr. Gough filed his *habeas corpus* petition in the United States District Court for the Southern District of Illinois, pursuant to 28 U.S.C. §2254(d). That section provides for relief if the State Court adjudication "(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceedings."

Mr. Gough sought relief under both subsections of §2254(d). He alleged that the ten-year delay before his retrial violated his Sixth Amendment right to a speedy trial under *Barker v. Wingo*, 407 U.S. 514 (1972), either directly or under the due process clause of the Fourteenth Amendment. He also alleged that the State court's decision, in particular its finding that the three-year delay during which Mr. Gough was denied his right to represent himself should be charged to Mr. Gough rather than the State, was based on an unreasonable determination of the facts in light of the evidence (mostly undisputed) presented in the State court proceedings.

The district court denied Mr. Gough's petition without reaching the merits of either of his claims, because the Act had been held to be a civil rather than a criminal proceeding in *Allen v. Illinois,* 478 U.S. 364 (1986), for purposes of the Fifth Amendment guarantee against compulsory self-incrimination, and this Court has never held that the Sixth Amendment applies to civil commitment proceedings. The district court held that in the absence of such a Supreme Court precedent, Mr. Gough would not be entitled to *habeas* relief under either subsection of §2254, and therefore declined to issue a certificate of appealability.

The court of appeals likewise declined to issue a certificate of appealability, finding that there had been no substantial showing of the denial of a constitutional right, pursuant to 28 U.S.C. §2253(c)(2).

This case provides an appropriate vehicle for this court to address two important issues of Federal law: (1) whether the Sixth Amendment right to a speedy trial applies to defendants charged under purported civil statutes, such as the Illinois Sexually Dangerous Persons Act, which may, upon conviction, result in an indefinite period of incarceration; and (2) whether, in *habeas corpus* proceedings brought under 28 U.S.C. §2254, the requirement of a prior Supreme Court precedent contained in §2254(d)(1), for decisions contrary to established Federal law, applies also to §2254(d)(2) for decisions based on an unreasonable determination of the facts.

I. This Court should grant the writ to determine whether persons charged under civil commitment statutes such as the Illinois Sexually Dangerous Persons Act, which, upon conviction, may result in an indefinite and potentially lifelong incarceration in prison, are entitled to a speedy trial under the Sixth Amendment.

In *Allen v. Illinois,* 478 U.S. 364 (1986), this Court held that proceedings under the Illinois Sexually Dangerous Persons Act ("Act") were not "criminal" within the meaning of the Fifth Amendment's guarantee against compulsory self-incrimination in "criminal cases". *Id.*, at 375. Similarly, the Sixth Amendment speedy trial right applies in "criminal prosecutions". However, there is a crucial difference between application of the Sixth Amendment right to a speedy trial, and the Fifth Amendment privilege against self-incrimination.

As pointed out in *Allen,* the State's purported goal in the Act is treatment, not punishment, and the requirement to give evidence that may be incriminatory could be understood as enhancing the reliability of expert testimony related to the defendant's need for such treatment *Id.*, at 374-375. Nothing similar can be said concerning the period of pretrial incarceration. Any treatment that might be provided to a defendant charged under the Act would occur only after conviction, not during the period between charging and trial, and holding the defendant in custody in the county jail for an extended period would in no way enhance the purported goal of the Act. In

Mr. Gough's case, that meant incarceration in the Ogle County Jail for an extraordinarily long time before being afforded the right to a trial and, if convicted, the benefits of the treatment which is the purported goal of the Act.

Allen was decided by a 5-4 vote, and much of the discussion in both the majority opinion by Chief Justice Rehnquist and the dissenting opinion by Justice Stevens centered on the close connection between criminal procedures and procedures under the Act, as well as the prospect of an indeterminate sentence. This court should grant the writ to make clear that defendants under purported civil statutes such as the Act, which bear such a close resemblance to criminal prosecutions, and which may result in lifelong incarceration, are entitled to the protection of the Sixth Amendment, including the right to a speedy trial, and that *Allen* does not compel a contrary conclusion.

Further, the State appellate court recognized that this Court's speedy trial jurisprudence, particularly *Barker v. Wingo,* applies to proceedings under the Act, by virtue of the due process clause of the Fourteenth Amendment. *In re Detention of Hughes,* 346 Ill. App. 3d 637, 646 (2004). However, the appellate court then misapplied *Barker* as well as this court's decision in *Faretta v. California,* 422 U.S. 806 (1975) when it attributed to Mr. Gough delays resulting from the trial court's refusal to allow Mr. Gough to represent himself over a period of three years, although he had never been found to be incompetent to waive his right to counsel, nor had his behavior ever been found to have resulted in a forfeiture of his

right to represent himself.

This court should grant the writ to make clear that the Sixth Amendment right to a speedy trial, whether applied directly to proceedings under the Act or by reason of the due process clause of the Fourteenth Amendment, requires also that this court's decisions be applied correctly.

II. This court should grant the writ to clarify whether the requirement of a Supreme Court precedent under 28 U.S.C. §2254(d)(1) for decisions contrary to clearly established Federal law, applies likewise to §2254(d)(2) for decisions based on an unreasonable determination of the facts.

Section 2254 differentiates between two alternative bases for granting an application for *habeas corpus* on behalf of a person in custody pursuant to the judgment of a State court. Subsection (d)(1) authorizes relief in the case of "a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States". Subsection (d)(2) authorizes relief in the case of "a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." The two subsections are separated by the word "or", and are therefore plainly alternative bases for relief.

Mr. Gough sought relief under both sections, alleging a violation of his right to a speedy trial under the Sixth Amendment, and also alleging that the State appellate court decision was based on an unreasonable determination that the three-year delay resulting from the trial court's refusal to allow Mr.

Gough to represent himself was attributable to Mr. Gough, for speedy trial purposes. Because Mr. Gough had never been found to be competent to waive his right to counsel, and had never been found to have forfeited his right to represent himself, and had repeatedly made unequivocal requests, and filed motions, seeking to do so, the facts supporting Mr. Gough's argument on this point were undisputed.

The district court, however, interpreted the requirement of a prior Supreme Court precedent, contained only in subsection (d)(1), to apply also to subsection (d)(2), where it does not appear, without explanation. By declining to issue a certificate of appealability, the court of appeals appears to have endorsed the district court's misinterpretation of §2254.

This court should grant the petition to address the question of whether the requirement of a Supreme Court precedent applies to subsection (d)(2) of §2254, as well as subsection (d)(1), despite the clear language of the statute to the contrary.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted. God Bless!

Respectfully submitted,
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