

JUN 28 2021

OFFICE OF THE CLERK

No. _____

21-6327

IN THE
SUPREME COURT OF THE UNITED STATES

Frank Paul Ferrara, pro se — PETITIONER
(Your Name)

vs.

Commonwealth of Virginia — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The Supreme Court of the Commonwealth of Virginia
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Frank Paul Ferrara, VCBR# 550163
(Your Name)

4901 East Patrick Henry Hwy, 2016
(Address)

Burkeville, Virginia 23922
(City, State, Zip Code)

VCBR Facility 804-766-3423
(Phone Number)

ORIGINAL

(i)

QUESTION(S) PRESENTED

1. Should this matter been allowed to progress to a civil commitment trial since the Respondent incarcerated the Petitioner for exercising his Constitutional Right to practice his chosen religion?
2. Does the denial of the circuit court to allow the Petitioner to present evidence in his behalf rise to the level of a Constitutional Due Process error or is it "harmless error" as the Virginia Supreme Court states?
3. Was the Virginia Supreme Court's decision, of "harmless error," erroneously applied in these matters, when the court's own decision states that the Petitioner had the right to present his witnesses' testimony and evidence, but he was denied that right by the circuit court's misapplication and misunderstanding of the statutes §37.2-906(D) and §37.2-907(A)?
4. If the Petitioner was allowed to present his expert evidence and testimony alongside that of the Commonwealth's expert, at the circuit court trial, can it truly and definitively be stated that the jury would have reached the same decision and that the outcome would have been the same as the Virginia Supreme Court stated?

LIST OF PARTIES

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

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

Ferrara v. Commonwealth, 299 Va 438, 854 SE2d 652 (2021)
Record No. 200117, Virginia Supreme Court, Judgment entered
February 25, 2021.

Commonwealth v. Ferrara, Case No. CL18-131, Fauquier County
Circuit Court, Warrenton, Virginia. Judgment entered October
20, 2019.

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Record No. 200117 Virginia Supreme Court 2-25-2021.

APPENDIX B: Commonwealth v. Ferrara, Case No: C4 18-131 Unsigned Final Order /
of Trial and Commitment, Filed October 10, 2019.

APPENDIX C: Constitutional And Statutory Provisions Involved

APPENDIX D: Pro se Appointment of Counsel, Order dated April 20, 2018

APPENDIX E: Exhibit A, Handwritten Chart of SVP Assessments completed for
the Commonwealth of Virginia.

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES: Ferrara v. Commonwealth, 299 Va 438, 854 SE2d 652 (2021) Record No. 200117. PAGE NUMBER 1, 4, 5, 6, 8, 9,

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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.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

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

reported at 199 Va. 438, 854 S.E.2d 652 (2021); or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. __A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was February 25, 2021. A copy of that decision appears at Appendix A.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. __A_____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

First Amendment, U.S. Constitution

Fifth Amendment, U.S. Constitution

Article Six, § 3, U.S. Constitution

Article I, Section 11, Virginia Constitution

Article I, Section 16, Virginia Constitution

Code of Virginia § 37.2-904(A)

Code of Virginia § 37.2-904(B)

Code of Virginia § 37.2-904(F)

Code of Virginia § 37.2-906(D)

Code of Virginia § 37.2-907(A)

All of the above are listed in Appendix C.

STATEMENT OF THE CASE

Background

The Petitioner, Frank Paul Ferrara, was evaluated for civil commitment, October 4, 2010, by Dr. Mark Hastings. Dr. Hastings concluded that he was not a sexually violent predator and not in need of civil commitment. The Commonwealth agreed and released him from the VDOC in January 2011.

Mr. Ferrara re-entered VDOC, in 2014, for a probation violation in connection with a misdemeanor indecent exposure conviction, a non-violent sex offense. He was re-evaluated for civil commitment, March 22, 2016, by Dr. Mark Hastings, who concluded that Ferrara was not an SVP nor did he meet the requirements for civil commitment. The Commonwealth agreed and he was released from VDOC in October 2016.

Mr. Ferrara re-entered VDOC, after having a disagreement with his probation officer "... in 2017, the court revoked Ferrara's probation because he had attended Jehovah's Witnesses meetings where children were present... He was sentenced to an active term of one year and three months." (Ferrara v. Commonwealth, 299 Va 438, 854 SE2d 652 (2021) Record No. 200117 Virginia Supreme Court, February 25, 2021).

On January 25, 2018, Dr. Dennis Carpenter concluded that Ferrara was an SVP and required civil commitment, although he did not administer a mental health examination nor did he conduct a personal interview, as required by the SVP Act. (Code § 37.2-904(B)). The Commonwealth agreed and Ferrara was committed to the Virginia Center for Behavioral Rehabilitation (VCBR), on November 5, 2019. Dr. Carpenter's diagnosis of Pedophilic Disorder was the only reason that Mr. Ferrara was civilly committed.

On August 10, 2020, Mr. Ferrara was evaluated by Dr. D. Brown for his Annual Review, at VCBR. Although he was not recommended for conditional release, the diagnosis of Pedophilic Disorder, given to him by Dr. Carpenter, which made him eligible for civil commitment was removed from his diagnosis. Mr. Ferrara no longer "suffered" from the mental disorder of Pedophilic Disorder because he did not meet the minimum requirements listed in the DSM-II manual. (See Exhibit A, Chart of Ferrara's SVP Assessments, Appendix E).

Statement of Facts and Analysis

Question One: "Should this matter been allowed to progress to a civil commitment trial since the Respondent incarcerated the Petitioner for exercising his Constitutional Right to practice his chosen religion?"

This case started when a government employee (probation officer) interfered in the choice of Mr. Ferrara's religious participation, to wit, attendance at the Kingdom Hall of Jehovah's Witnesses.

Mr. Ferrara was placed at bar, in the circuit court and was found to be in violation of his conditions of probation. ("Several months later, in 2017, the court revoked Ferrara's probation because he attended Jehovah's Witness(es) meetings where children were present... He was sentenced to an active term of one year and three months." Ferrara v. Commonwealth, 299 Va 438, 854 SE 2d 652 (2021) Page 2).

Mr. Ferrara was exercising his right of "Freedom of Religion: the right to adhere to any form of religion or none, to practice or abstain from practicing religious beliefs, and to be free from governmental interference with or pro-

motion of religion, as guaranteed by the First Amendment and Article III, § 3 of the U.S. Constitution and the Virginia Constitution, Article I, Section 16.

Question Two: Does the denial of the circuit court to allow the Petitioner to present evidence in his behalf rise to the level of a Constitutional Due Process error or is it "harmless error" as the Virginia Supreme Court states?"

Question Three: Was the Virginia Supreme Court's decision, of "harmless error," erroneously applied in these matters, when the court's own decision states that the Petitioner had the right to present his witnesses' testimony and evidence, but he was denied that right by the circuit court's misapplication and misunderstanding of the statutes § 37.2-906(D) and § 37.2-907(A)?"

Question Four: If the Petitioner was allowed to present his expert evidence and testimony alongside that of the Commonwealth's expert, at the circuit court trial, can it truly and definitively be stated that the jury would have reached the same decision and that the outcome would have been the same, as the Virginia Supreme Court stated?"

The Virginia Supreme Court states: "Ferrara maintains that excluding the reports of Dr. Hastings offends due process and deprives him of a fair trial. A clear line of authority says otherwise. "[C]ivil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." Addington v. Texas, 441 U.S. 418, 425 (1979). Although the Due Process Clauses of the Virginia and United States Constitutions afford a litigant the right to present evidence in his favor, Va. Const. art. I, § 11; U.S. Const. amend. V, due process is not offended when the litigant forfeits the right through purposeful non-cooperation. "A defendant's right to present relevant evidence is not unlimited, but rather is subject to reasonable restrictions." United States v. Scheffer, 523 U.S. 303, 308 (1998)" (Ferrara, Page 9).

Eventhough Mr. Ferrara refused to cooperate with the Commonwealth's expert, he was not barred from presenting Dr. Hastings as a witness or his reports as evidence. The Commonwealth chose not to remedy this situation. Mr. Ferrara only chose not to cooperate with Dr. Carpenter, but he had previously cooperated fully with Dr. Hastings twice before.

Therefore, per Code § 37.2-904(F) which states: "If the CRC deems it necessary to have the services of additional experts in order to complete its review of the prisoner or defendant, the Commissioner shall appoint such qualified experts as are needed."

The CRC did not deem it necessary to have the services of additional experts in order to complete its review. The CRC accepted Dr. Carpenter's statutorily incomplete report as if it was complete.

However, because of the refusal of Mr. Ferrara to cooperate with Dr. Carpenter, there was no current mental health examination nor a personal interview, which are statutory requirements. Code § 37.2-904(B).

This above quoted statute, Code § 37.2-904(F), governs this present proceeding of what to do to remedy a non-cooperating individual - you assign another expert to complete the review.

Nowhere in the SVP Act does it allow for the CRC to utilize an incomplete assessment or for an expert to be able to write an assessment without administering a mental health examination including a personal interview. Code § 37.2-904(B) states: "CRC assessments... shall include a mental health examination, including a personal interview..." Code § 37.2-904(A) states: "Within 180 days... the CRC shall (i) complete its assessment... pursuant to subsection B..." Thus, the CRC had 180 days to complete the review of Mr. Ferrara.

Thus, Mr. Ferrara was, in fact, civilly committed in violation of the SVP Act, instead of according to it. The CRC did not complete its review of him in the mandated 180 days nor was an extension to that time limit requested from or authorized by the circuit court. Nor was the assessment completed to the statutory requirements.

As for the Due Process Clauses of both Federal and State Constitutions, these were also proven to be violated by the circuit court, when said court chose to bar Mr. Ferrara from, not only presenting Dr. Hastings testimony and reports as evidence, but also, when it would not allow him, his counsel nor his witnesses, to even mention the fact that he was incarcerated for a sexually violent offense and released from prison, twice, because the Commonwealth chose not to pursue him for civil commitment based on the assessments of the Commonwealth's expert, Dr. Mark Hastings.

The record reflects the following facts with regards to this issue: "Our review of the text and structure of these statutes leads us to agree with Ferrara." (Ferrara, Page 5)

"Therefore, the trial court in the present proceeding erred in concluding that Code § 37.2-906(D) barred the respondent from introducing evidence at his commitment hearing. Furthermore, Code § 37.2-907(A) does not apply to exclude Dr. Hastings' testimony and reports because it bars testimony from an expert "appointed to assist the respondent" when the respondent has failed to cooperate with the Commonwealth's expert. Code § 37.2-907(A). Dr. Hastings was an expert for the Commonwealth who was previously tasked with evaluating Ferrara. He was not an expert appointed for the respondent." (Ferrara, Pages 6 and 7).

"Although we agree with Ferrara that Code § 37.2-906 applies to probable cause hearings, rather than civil commitment hearings, we nevertheless affirm the judgment

of the circuit court on the basis of harmless error." (Ferrara, Page 1).

"Ferrara then moved pretrial to introduce the 2010 and 2016 evaluations of Dr. Hastings and to allow Dr. Hastings to testify at trial. In response, the circuit court held that: 1). Respondent shall not elicit testimony during its cross-examination of the Commonwealth's expert, Dr. Carpenter, or make reference to in argument or opening statement, hearsay facts or opinion contained in prior evaluations conducted by Dr. Mark Hastings without first laying the requisite foundation; and 2) Respondent, Respondent's counsel and Respondent's witnesses shall not offer evidence or argument that Respondent previously served a period of incarceration in the [VDOC] for a sexually violent offense but prior to his release from VDOC the Commonwealth did not file a petition to civilly commit Respondent as a sexually violent predator without first approaching the Bench, outside the presence of the jury, and having the Court rule on the matter's admissibility.

The transcript indicates that the circuit court relied on Code § 37.2-906(D) in excluding Dr. Hastings' reports and preventing Dr. Hastings from testifying." (Ferrara, Page 3).

Is this not the epitome of a Due Process Rights violation?

The statute gave Mr. Ferrara the right to present Dr. Hastings' testimony and his reports as evidence, but he was denied that right, by the circuit court, because of the courts misapplication and misunderstanding of the statute, as outlined above.

Furthermore, because of the circuit court's decision, Mr. Ferrara was unable to present any evidence to the jury that would aid in his defense, due to the fact that Dr. Hastings' testimony and reports were the sole evidence that he was relying on. ("...the trial court... erred in concluding that Code § 37.2-906(D) banned the respondent from introducing evidence at his commitment hearing." Ferrara, Page 6).

REASONS FOR GRANTING THE PETITION

Everything that has been outlined in this document does not constitute "harmless error", but it portrays a gross miscarriage of Justice and a perversion of the laws of the Commonwealth of Virginia.

It outlines the violation of Mr. Ferrara's rights under State and Federal Constitutions, which are not "harmless error".

Mr. Ferrara has been denied his liberty and his right to pursue happiness for the past four years, and counting, which is not "harmless error."

Mr. Ferrara is of the opinion that what makes these errors "harmless error", in the eyes of the Virginia Supreme Court, is simply the fact that they were perpetrated against a registered sex offender in the pursuit of his civil commitment, thus, they are "harmless error."

Mr. Ferrara cannot fathom that it would be "harmless error" to deny an individual the ability to present evidence and witnesses, on his behalf, that could have the potential to safeguard his liberty interests and assist him in pursuing happiness in this country.

Mr. Ferrara believes that he is not the only individual that has the statutes misapplied in this process of being civilly committed.

But, Mr. Ferrara also believes that all of these violations can be corrected, in his case, by allowing him the opportunity to present his case to a jury of his peers at a new trial.

He believes that if this Honorable Court grants this petition that maybe the Commonwealth of Virginia will be more cautious and careful when conducting future civil commitment trials.

Mr. Ferrara is only seeking, through this petition, to have the

Commonwealth of Virginia held accountable for their actions when those actions violate established statutes and laws, both Federal and State.

Therefore, Mr. Ferrara humbly makes request before this Honorable Court for redress in these matters. He hopes and prays that this Court will see fit to GRANT this petition by either dismissing the case or remanding it back to the circuit court for a new trial.

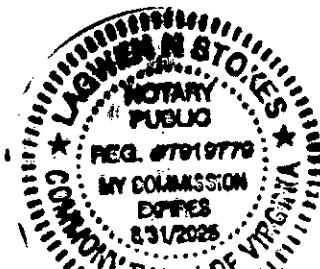
CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Frank Ferrara

Date: 6-30-2021



Frank Ferrara, 6/30/21

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