No. 21-6965

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

LAWTIS DONALD RHODEN,

Petitioner,

vs.

CALIFORNIA DEPT. OF STATE HOSPITALS,
Respondent,

On Petition for Certiorari to the United States Court of Appeals for the Ninth Circuit

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PETITION FOR A WRIT OF CERTIORARI

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On the Petition for Writ of Certiorari

QUESTIONS PRESENTED FOR REVIEW

I.

Whether The Current Version of the California SVP Law Violates the Due Process Clause under the Fourteenth Amendment because it does not offer a Method by which a SVP can Seek Unconditional Discharge from his Commitment Without the Approval of the Department of State Hospitals

II.

Whether Under the Fourteenth Amendment and Kansas v. Hendricks, 521 U.S. 346 (1997), California can Lawfully Hold a Person in Involuntary Civil Confinement under the SVPA Indefinitely Without a Due Process Hearing Where Such Person has Evidence that he does not have a Current Mental Disorder and is no Longer Dangerous and has Petitioned the Court for a Hearing to Prove his Lack of a Mental Disorder and Dangerousness

LIST OF PARTIES

1) LAWTIS DONALD RHODEN, Petitioner;

2) CALIFORNIA DEPT. OF STATE HOSPITALS, Respondent.

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On March 12, 2021, the United States Magistrate Judge issued a Report and Recommendation, recommending that Petitioner's Petition for Writ of Habeas Corpus be denied and that the action be dismissed with prejudice. [Dkt. No. 8.] See, (Copy of 3-12-21 R&R in the Appendix hereto, EXHIBIT "A."

The order of the United States District Court for the Central District of California adopting the Magistrate's Findings and Recommendations granting dismissing Petitioner's writ, entered on June 29, 2021 in Case No. 8:20-cv-01096-MWF (PD) See, (copy of 6-29-21 order in the Appendix hereto, EXHIBIT "B."

Petitioner's application for a Certificate of Appealability (COA) was summarily denied by the Ninth Circuit Court of Appeals on November 16, 2021 in Case No. 21-55780. See, (copy of 11-16-21 order in the Appendix hereto, EXHIBIT "C."

JURISDICTION

On February 16, 2018, Petitioner filed a petition for unconditional discharge from his SVP commitment pursuant to Welfare & Institution Code section 6605.

On April 6, 2018, the trial court denied Petitioner's petition with prejudice.

Petitioner filed a timely notice of appeal. On January 16, 2018, the Court of Appeals, Fourth Appellate District, Division Three, issued an unpublished opinion on January 16, 2020, denying Petitioner's claims.

Petitioner timely file a petition for review to the California Supreme Court, which was summarily denied on April 15, 2020.

Petitioner filed a petition for writ of habeas corpus in the federal district court for the Central District of California in Case No. 8:20-cv-01096-MWF (PD). On March 12, 2021, the United States Magistrate Judge issued a Report and Recommendation, recommending that Petitioner's Petition for Writ of Habeas Corpus be denied and that the action be dismissed with prejudice. [Dkt. No. 8.] On March 26, 2021, Petitioner filed his Objections. [Dk. No. 9.] On June 29, 2021, the district court entered an order accepting the findings and conclusions, and recommendation of the US district judge. [Dkt. Nos. 9 & 10.]

Petitioner subsequently filed a motion for issuance of a Certificate of Appealability (COA), which was denied by the Ninth Circuit Court of Appeals on November 16, 2021, in Case No. 21-55780.

The jurisdiction of this Court to review the Judgment of the Ninth Circuit is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES AT ISSUE

1) Fourteenth Amendment to the United States Constitution

2) 28 U.S.C. §2254

STATEMENT OF THE CASE

Petitioner is incarcerated at Coalinga State Hospital at Coalinga ("CSH"), California under Welf. & Inst. Code §§6600 et seq. (SVPA). Petitioner contends that his due process rights under the Fourteenth Amendment are violated because there is no mechanism by which he can seek unconditional discharge, notwithstanding his evidence that he has no current mental disorder and is no longer dangerous.

Petitioner asserts that he can prove that he is no longer an SVP, but he is still being illegally confined because the government will not acknowledge his improved status and afford him the opportunity to prove his suitability for unconditional discharge. The current statutory scheme violates Petitioner's federal due process rights because under the Fourteenth Amendment, a mentally ill person cannot be held unless the government can prove both that the person is currently mentally ill and that the person is dangerous as a result of that mental illness. The government cannot prove that about Petitioner and, in fact, Petitioner can prove the contrary.

A. FACTS GIVING RISE TO THIS CASE

Petitioner Rhoden has been involuntarily confined to a maximum security state forensic hospital under the SVPA, for sixteen (16) years. He has credible evidence that he is no longer dangerous and does not have a mental illness. Yet, under California law Petitioner is not allowed to petition the courts for "unconditional" discharge without a recommendation from the Department of State Hospitals that he is suitable for unconditional release.

Under current California law, a direct petition for unconditional release is not available. See, (Welf. & Inst. Code 6608, subd. (a). Thus, a person who can prove he is not an SVP is still subject to an indefinite civil commitment. This is the problem faced by Petitioner. He is being denied a due process hearing to present his evidence that he is no longer dangerous, or suffering from a mental disorder. If Petitioner were given a due process hearing, the trier of fact might decide that he is no longer an SVP and should be released unconditionally.

In this case, Petitioner has had forensic evidence (polygraphs and PPG's), and an evaluation report from Dr. Brian Abbott, since 2017, concluding that he does not meet the SVPA criteria. Yet, because of the state court's ruling, and now the federal court's denial of his habeas corpus petition, Petitioner Rhoden is still being civilly confined four (4) years later, even though he is no longer dangerous.

REASONS WHY CERTIORARI SHOULD BE GRANTED

I.

Review is Warranted to Determine Whether the Current Version of California's SVP Law Violates the Due Process Clause under the Fourteenth Amendment and the holding in Kansas v. Hendricks, 521 U.S. 346 (1997), because it does not offer a Method by which a SVP can Seek Unconditional Discharge from his Commitment Without the Approval of the Department of State Hospitals

A. THE DISTRICT COURT'S FINDINGS AND RECOMMENDATIONS

The result of the magistrate's recommendation on March 12, 2021, is an implicit holding that a convicted SVP under Welf. & Inst. Code §§6600 et seq. can be held in civil confinement indefinitely, even though such person has credible evidence to present to the courts, that he is no longer dangerous, and should be released as clearly mandated by Foucha v. Louisiana, 504 U.S. 71 (1992); [Kansas v. Hendricks, *supra.*]

Also implicit in the magistrate judge's ruling is the implication that once a person is convicted under the SVPA, that person has no right to "immediate discharge," even if the person can prove that he is no longer dangerous. Instead such a person must be released "conditionally," and remain under community supervision and restrictions for at least one year, before that person may petition the court for "unconditional" discharge under the provisions of *Welf. & Inst. Code §6605.*

ARGUMENT

I.

BECAUSE CALIFORNIA LAW DOES NOT PERMIT A PERSON COMMITTED AS AN SVP TO PETITION FOR IMMEDIATE DISCHARGE, THE LAW VIOLATES THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT

California law does not permit a person committed as an SVP to seek "unconditional discharge" under Welf. & Inst. Code section 6605, or any other provision of California law without the approval of the government (even if a person is no longer dangerous), such as Petitioner Rhoden. Effectively, it imposes what could be a lifetime commitment upon Petitioner without offering him any reasonable opportunity for "unconditional" release. This violates Petitioner's due process rights under the Fourteenth Amendment.

Once a person is committed as an SVP in California, he has only three ways out. First, he can die. Second, he can receive a favorable annual review under Welf. & Inst. Code section 6604.9 which would permit him to file a petition under Welf. & Inst. Code section 6605. This petition would require the state to prove beyond a reasonable doubt that Petitioner remains an SVP. Third, he can petition for conditional release under Welf. & Inst. Code section 6608, and

after obtaining his conditional release, remain in the conditional release program for a year and then file a petition under section 6605, seeking unconditional discharge. [1]

None of these provisions provide a way for Petitioner to prove he is no longer an SVP and obtain his release in anything resembling a reasonable amount of time. Thus, California law violates the due process clause of the Fourteenth Amendment. The indeterminate civil commitment now in effect for SVP's in California can be constitutional under the due process clause only if it provides a method by which a person who is no longer an SVP can be promptly released - not being forced to spend 3-4 years on supervised release first.

A. FEDERAL DUE PROCESS ANALYSIS UNDER U.S. CONST. AMEND. 14

This Court has recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection. Addington v. Texas, 441 U.S. 418, 425 (1979). Under Jones v. United States, 463 U.S. 354, 356-358 (1983), the Supreme Court determined that it is permissible, under certain circumstances, to place the burden of proof on the committed individual to establish that he is no longer mentally ill or dangerous, but it did so in the context of a statutory scheme which allowed the individual to seek judicial review of his commitment every six months whether or not he received approval for such review from the hospital. California's SVP law provides no such opportunity.

In Foucha v. Louisiana, *supra,* this Court considered a ruling by the Louisiana Supreme Court that it was permissible to continue to confine an individual who has been found not guilty by reason of insanity because he remained dangerous even though he no longer was

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[1] As a practical matter, no SVP has ever been "unconditionally discharged," after one-year of supervised release. The average amount of time SVP's are forced to remain on supervised release has been 3-4 years, before they are "unconditionally" released.

mentally ill. This Court concluded that it was impermissible to indefinitely detain an individual who was not mentally ill but could not prove that he was not dangerous to others. [Foucha, *supra,* 504 U.S. at 82-83.] The Foucha ruling reaffirmed the constitutional due process principle that a person can be civilly committed only as long as he is both mentally ill and dangerous and that the individual must be given the opportunity to prove that he no longer qualifies for commitment rather than being held indefinitely based upon the existence of a preexisting and, at the time it was imposed, legitimate commitment.

This Court's decision in Kansas v. Hendricks, *supra,* held in pertinent part:

> "Far from any punitive objective, the confinement' duration is instead linked to the stated purposes of the commitment, namely, to hold the person until his mental abnormality no longer causes him to be a threat to others. If at any time, the confined person is adjudged 'safe to be at large,' he is statutorily entitled to immediate release. [P] ...viewed as a whole, the SVPA is also designed to ensure that the committed person does not 'remain confined any longer than he suffers from a mental abnormality rendering him unable to control his dangerousness.'"

[Hendricks, 521 U.S. at 363-364.]

The determination of "likelihood" of future dangerousness is an element that must be proved in addition to the existence of a mental disorder in order to commit an individual as an SVP. [Kansas v. Hendricks, *supra*].

As a matter of due process, it is unconstitutional for a State to continue to confine a harmless, mentally ill person. [Foucha v. Louisiana, *supra,* 504 U.S. at 77]. Even if the initial commitment was permissible, it cannot constitutionally continue after that basis no longer exists. [Kansas v. Hendricks, *supra,* 521 U.S. at 363-364]. The SVPA is designed to ensure that the committed person does not remain confined any longer that he or she suffers from a mental abnormality rendering the person unable to control his or her dangerousness. [*Id.*]

1. Under Current California SVP Law Petitioner Does not have the Opportunity to Prove by a Preponderance of the Evidence that he is no Longer an SVP

Petitioner Rhoden has been involuntarily confined to a maximum security state forensic hospital under the SVPA, for sixteen (16) years. He has strong evidence that he is no longer dangerous and does not have a mental illness. Yet, under California law Petitioner is not allowed to petition the courts for "unconditional" discharge without a recommendation from the Department of State Hospitals that he is suitable for unconditional release. Petitioner submits that this is a violation of his due process rights under the Fourteenth Amendment.

Under current California law, a direct petition for unconditional release is not available. See, (Welf. & Inst. Code 6608, subd. (a). Thus, a person who can prove he is not an SVP is still subject to an indefinite civil commitment. This is exactly the problem faced by Petitioner. He has evidence that he no longer meets the SVP criteria, and should be released unconditionally. Yet, under state law, Petitioner is being denied a forum to present his evidence that he is no longer dangerous, or suffering from a mental disorder. Thus, California's law violates Petitioner's federal due process rights. Because of this law, Petitioner has been forced to spend additional years in confinement. He has been deprived of a due process hearing where he could present his evidence that he is no longer dangerous, or suffering from a mental illness, requiring his unconditional release.

PETITIONER'S OBJECTIONS TO MAGISTRATE'S R&R

The Magistrate Judge pointed out that:

> "The California Court of Appeal held that the SVPA's requirement that civilly committed persons first seek conditional release did not violate any due process protections. The court reasoned that California's legitimate interests in protecting society from people who were previously convicted of sexually violent offenses and found to be mentally ill and dangerous warranted restricting such people

from petitioning for unconditional release without any precondition." [Mag's R&R, p.5]

The Magistrate held:

"The court of appeal reasonably rejected Petitioner's due process claim. The Supreme Court has never held that a person who is civilly committed under state law after having been convicted of a sexually violent crime and found to have been mentally ill and dangerous is entitled to petition for unconditional release without preconditions. The lack of clear Supreme Court precedent on this issue, alone, dictates that the court of appeal's rejection of Petitioner's claim was neither an unreasonable application of, nor contrary to clearly established Supreme Court precedent. (Citation omitted.) [Mag's R&R, pp. 5-6]

Petitioner Rhoden submits that if he is no longer suffering from a mental illness, and no longer dangerous within the meaning of the SVPA, as he is alleging (based upon credible evidence) than denying him a due process hearing and forcing him to remain confined, or subject to restrictive and prolonged supervised release for a period of years - is a violation of his federal due process rights under the Fourteenth Amendment. [2] If the lower federal court's opinion is allowed to stand, the decision would be tantamount to a ruling that: "Once a person is convicted as an SVP, that person can be held in confinement indefinitely, or forced into supervised release for a number of years before being "unconditionally" released, even if such person is no longer suffering from a mental disorder, or dangerous." Such a holding files in the face of [Kansas v. Hendricks, *supra,* 521 U.S. at 363-364].

Federal due process requires that Petitioner be given a due process hearing to prove that he is no longer dangerous. Otherwise, he will be forced to remain confined, or spend a number

[2] As a matter of due process, it is unconstitutional for a State to continue to confine a harmless, mentally ill person. [Foucha v. Louisiana, *supra,* 504 U.S. at 77.]. Even if the initial commitment was permissible, it cannot constitutionally continue after that basis no longer exists. [Kansas v. Hendricks, *supra,* 521 U.S. at 363-364]. The SVPA is designed to ensure that the committed person does not remain confined any longer than he or she suffers from a mental abnormality rendering the person unable to control his or her dangerousness. [*Id.*]

of years on supervised release, notwithstanding that he is no longer dangerous, and no longer meets the SVPA criteria. In this case, Petitioner has had forensic evidence (polygraphs and PPG's), and an evaluation report from Dr. Brian Abbott, since 2017, concluding that he does not meet the SVPA criteria. Yet, because of the lower courts' rulings, Petitioner Rhoden is still being civilly confined four (4) years later, even though he is no longer dangerous. This is a violation of Petitioner's due process rights under the Fourteenth Amendment. [Foucha v. Louisiana, *supra,* 504 U.S. at 77.]; [Kansas v. Hendricks, *supra,* 521 U.S. at 363-364]. If at any time, the confined person is adjudged "safe to be at large," he is statutorily entitled to immediate release. [*Id.*]

The federal Magistrate has overlooked the clear Supreme Court precedent that it is unconstitutional for a State to continue to confine a harmless, mentally ill person. [Foucha v. Louisiana, *supra,* 504 U.S. at 77.] (Even if the initial commitment was permissible, it cannot constitutionally continue after that basis no longer exists). The SVPA is designed to ensure that the committed person does not remain confined any longer than he suffers from a mental abnormality rendering the person unable to control his or her dangerousness. [Kansas v. Hendricks, *supra,* 521 U.S. at 363-364].

The Magistrate is not correct in holding that: "...The lack of clear Supreme Court precedent on this issue, alone, dictates that the court of appeal's rejection of Petitioner's claim was neither an unreasonable application of, nor contrary to clearly established Supreme Court precedent..." (Citation omitted.) [Mag's R&R, pp. 5-6]. Petitioner submits this conclusion is erroneous because [Foucha v. Louisiana, *supra,* 504 U.S. at 77]; and [Kansas v. Hendricks, *supra,* 521 U.S. at 363-364], is clear Supreme Court precedent controlling the issue.

Therefore, the state courts' rejection of Petitioner's claim was an unreasonable application of, and contrary to clearly established Supreme Court precedent.

THE STATE COURT'S FACTUAL AND LEGAL CONCLUSIONS ARE NOT ENTITLED TO DEFERENCE BY THIS COURT

For the reasons stated above, Petitioner asserts that the state court's factual and legal findings on this issue are not entitled to deference under 28 U.S.C. §2254 (d) (1), because they were: (1) contrary to clearly established federal law as determined by the Supreme Court; (2) involved an unreasonable application of such law; and (3) were based on an unreasonable determination of the facts in light of the record before the state court.

Petitioner argues that the state court's denial of his Fourteenth Amendment due process and equal protection claims amounted to a state court decision which involved an "unreasonable application of" federal law because it was "objectively unreasonably." [Williams, *supra,* 529 U.S. at 409-410]; Woodford v. Visciotti, 537 U.S. 19, 24-25 (2002).

The state court's refusal to allow Petitioner a venue and an evidentiary hearing to present evidence that he is no longer dangerous or suffering from a mental disorder, resulted in a violation of Petitioner's federal due process rights, as argued above. Under the law and arguments set forth above, the state courts' denial of his state habeas corpus petition was "objectively unreasonable" within the meaning of 28 U.S.C. §2254 (d) (1). In light of the above, this Court is not required to give deference to the state courts on this issue.

APPLICABLE LAW REGARDING A CERTIFICATE OF APPEALABILITY

A COA will not be granted unless the petitioner makes a substantial showing of the denial of a federal right. See, Barefoot v. Estelle, 463 U.S. 880, 893 (1983). *"the petitioner need not show that he should prevail on the merits...Rather, he must demonstrate that the*

issues are debatable among jurists of reason; that a court could resolve the issues in a different manner; or that the questions are "adequate to deserve encouragement to proceed further.'" [*Id.* 463 U.S. at 893 n. 4]. Accord, [Slack v. McDaniel, *supra,* 529 U.S. at 484.] A petitioner need not show that she will prevail on the merits to be granted a COA [*Id.* at 485], nor that ultimate relief is certain, nor even that jurists of reason would agree, after consideration of the claim on its merits, that petitioner cannot prevail. Miller-El v. Cockrell, 537 U.S. 322, 337-38 (2003).

ARGUMENT

Petitioner Rhoden asserts that the facts and arguments he presented to the federal district court and Ninth Circuit Court of Appeals, demonstrate: (1) that his issues are debatable among jurists of reason; (2) that a court could resolve the issues in a different manner; and (3) that the questions are "adequate to deserve encouragement to proceed further. [Barefoot v. Estelle, *supra,* 463 U.S. at 893].

Petitioner submits the Ninth Circuit's denial of a COA was error because jurists of reason would find it debatable whether the district court was correct in its ruling that Petitioner can be denied a due process hearing to prove that he no longer meets California's SVPA criteria. [Slack v. McDaniel, *supra,* 529 U.S. at 484.]

CONCLUSION

PREMISES CONSIDERED, and for the reasons and law argued above, Petitioner submits that the Petition for Writ of Certiorari should be granted.

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