No. 21-7452

IN THE

SUPREME COURT OF THE UNITED STATES

ANTHONY ATKINSON - PETITIONER,

VS.

MATTER OF STATE NEW YORK,

M.H.L. ART. 10, et al., - RESPONDENT(S).

PETITION FOR REHEARING

I, Anthony Atkinson, affirm under penalty of perjury that:

1. I am the petitioner in the above entitled action, respectfully submit this affirmation in further support of my petition for a writ of certiorari to this Court March 21, 2022.

2. The reasons for this Petition are the following: The petitioner has no plain, adequate or complete remedy at law to redress the wrongs herein.

3. This statement of Claims under U.S.C. 1331, is a case involving the United States Constitution or Federal Law or Treaties.

4. The claims herein, involves matters of the Article 10 statutes where,

In order to effectuate treatment for the most dangerous recidivist sex offenders, the legislature authorized the Commissioner of the New York State Office of Mental Health (O.M.H.), to designate multidisciplinary professional personnel to provide a preliminary review and evaluation of detained sex offenders for the purpose of Civil management, M.H.L. §10.05(d). Here, disciplinary relates to punishment and past misdeeds, rather than review of medical records for a possible volitional impairment and treatment under M.H.L. §10.03(i).

5. And after that review, those multidisciplinary personnel determine whether to refer an offender to a Case Review Team (CRT), established under M.H.L. §10.05. Were based on case review team personnel Dina Sunkis, September 11, 2018, summery report and findings, the State of New York Attorney General may file a sex offender civil management petition in the county where the respondent is located and may request an independent examination of the respondent by an examiner of it's choosing, M.H.L. §10.06(a)&(d).

6. Where, on July 19, 2018, (D.O.C.C.S.), Associate Commissioner, Ann McGrath submitted a notice to the Attorney General's civil commitment Bureau Chief, Michael Connolly in accordance with section 10.05(b) of Mental Hygiene Law as added by the Sex Offender Management and Treatment Act (SOMTA), indicating that plaintiff may be a detained sex offender nearing his anticipated release from the custody of the Department of Corrections on his maximum expiration date September 28, 2018.

7. However, (CRT) personnel Dina Sunkis, and Associate Commissioner Ann Marie McGarth, neglected to produce sufficient medical reports from the State of

New York Department of Correctional Service Psychiatric examiners pertaining to crrent therapeutic treatment for a congenital disease or disorder involving a volitional impairment, M.H.L. §10.03(1).

8. Furthermore, plaintiff has not been disciplined for any inappropriate sexual behavior while incarcerated, nor was the plaintiff acting in a way at the end of his penal term, that would likely result in serious harm to others, such that a Mental Hygiene arrest would be made and the plaintiff be confined to a secure treatment facility, Mental Hygiene Law §10.03(e). The State's Article 10 case lacks sufficient proof of a Mental Abnormality.

9. The case lacks sufficient medical evidence of a congenital disease, or disorder of a volitional impairment. And that the Act violates the Federal Constitutions Due Process, Double Jeopardy and Ex Post Facto clauses. Article 10 subjects plaintiffs Mental states to be twice put in jeopardy by reducing the criminal intent, to mistake or lack of knowledge.

10. On the other hand, the statute, because it did not provide the plaintiff in the case at hand with any treatment until after his release date from prison, and then only inadequate treatment, (1) was not simply an effort to commit the prisoner civilly, but rather an effort to inflict further punishment upon him, and (2) therefore violated the Federal Constitution's Ex Post Facto clause, which forbids the application of any new punitive measure to a crime already consummated.

11. In a petition filed September 13, 2018, by the State of New York Attorney General's Office, the Attorney General claimed that the plaintiff

suffered from a Mental Abnormality based on a diagnosis of psychiatric examiners Jonathan Miljus, and John Thamassen, who claimed plaintiff had a pedophilic disorder, borderline intellectual functioning disorder, antisocial personality disorder, and alcohol use disorder. September 14, 2018, St. Lawrence County Court Judge Mary Farley granted the State's petition. October 10, 2019, Suffolk County Court Judge Richard Ambro held a bench trial and found in favor of the States Doctors.

12. And there are judgmental mistakes that would wrongly deprive a person of important liberty due to false diagnosis.

13. The DSM-5 indicates there is an interaction between ASPD and pedophilia and that males with both traits are more likely to act out sexually with children, according to the DSM-5. ASPD requires evidence of a conduct disorder before the age of 15. The disorder is manifested by being deceitful, irritable, aggressive, irresponsible and demonstrate a lack of remorse for harmful actions.

14. However, the State of New York, Attorney General along with psychiatric examiners, neglect to provide sufficient medical proof of a disorder, effecting the mental or emotional forces, or processes developing especially in early childhood, and their effect on behavior and mental states. The medical evidence of the disorder existing before age 15, resulting in the offenders deceitfulness, irritable, aggressive, irresponsible and demonstrating a lack of remorse for harmful actions.

15. Whereas, a person who had only pedophilia without ASPD, would be less inclined to be deceitful, may have a conscience that would be an internal braking mechanism that would inhibit him from engaging in future acts of pedophilia. Further, the state of New York, Attorney General along with psychiatric examiners neglect to provide sufficient medical proof of a congenital disease or disorder of a volitional impairment, effecting the mental or emotional forces or processes developing especially in early childhood and their effect on behavior and mental states. Mental Hygiene Law §10.03(i).

16. The fact that petioner was found guilty in his criminal case of intentionally committing the sex act, actually procludes mistake or lack of knowledge or, "volition," the failure to exercise the power which the mind has of considering or forebearing to consider an idea.

17. Moreover, a finding of mental abnormality under M.H.L. §10.03(1), also couples with the finding required under Penal Law 40.15, where at the time the sex offense was committed, the petitioner would have lacked the criminal responsibility as a result of a mental disease or defect. Thus, warranting a Criminal Procedure Law Section 730 evaluation prior to criminal trial and plea. And since congenital may have existed at or dated from birth, it's prior to the commission of the sex act, and trial.

18. This incapacity relates to a lack of legal ability to act, disability, incompetence, lack of adequate power. The diminished capacity or diminished responsibility defense, based upon claims of a mental condition which may be insufficient to exonerate a defendant of guilt, but that may be relevant to specific mental elements of certain crimes or degrees of crimes, which also relates to the Durham Rule - or - product rule, which holds that an accused is not criminally responsible if his or her unlawful act was the product of mental disease or defect. (This illustration apposes the borderline intellectual functioning disorder diagnoses by Dr. Miljus).

19. So, whether the mental disease or disorder is under CPL Section 730 or, M.H.L. §10.03(1), the offender is guilty, but mentally ill, which is equivalent to a finding of guilty, a verdict establishing that the offender, although mentally ill, was sufficiently in possession of his faculties to be morally blameworthy for his acts.

20. Due to the fact that no volitional condition or recklessness exist, the act does violate the Ex Post Facto Clause involving the commission of the same sex offense, that now stands alone. M.H.L. §10.03(e).

21. The commission of the sex offense relied on by the State Attorney General in civil matters, is evidence of prior criminal conduct predicated upon past misdeeds for which the accused has already been convicted and, affixes that culpability of prior criminal conduct to that act... what is proscribed is the direct conduct rather than an unintended result. The defendant's intent to commit that crime charged will sometimes be obvious fro the act. For example, if the crime is sodomy, the defendant's intent to commit that crime, can be inferred from the act itself.

22. Mental Hygiene Law §10.03(3) defines a dangerous sex offender requiring confinement as a person who is a detained sex offender suffering from a mental abnormality involving a strong predisposition to commit sex offenses, and such an inability to control behavior, that the person is likely to be a danger to others and commit sex offenses if not confined to a secured treatment facility.

23. Of course a convicted sex offender would be a detained sex offender appearing to be a danger to others, and likely to commit sex offenses because of his past misdeeds.

24. The State Attorney General and Psychiatric examiners merely rely on past misdeeds as their proof of the offenders intent to commit sex offenses in the future. Which in these situations is founded on the law of probabilities.

Also, the State's "Recidivism" justification which means, relapse into a previous condition or mode of behavior; esp., relapse into criminal behavior.

(Note: Since there is no evidence of a previous condition, its relapse into a previous mode of behavior).

25. The theory is that the more often the act constituting the crime has been done, the less the likelyhood that it could have been done innocently, as if by chance. The recurrence of the act negatives the possibility of good faith or inadvertence. Evidence of past convictions and other uncharged crimes is solely to demonstrate the accused's predisposition to commit sex offenses in the future.

26. In truth, very few detainees in S.O.P.'s have ever been diagnosed as suffering from any recognized mental illness as identified by the Diagnostic and Statistical Mannual Version (DSM-5) of the American Psychiatric Association. And in those relatively few cases, there is no casual link between the illness in question and the detainees commission of any sex crime. There is no science what-so-ever to support the notion that sex offenders commit sex offenses because they suffer from any mental or emotional Malady (Illness, Disorder, or Dysfunction), or Abnormality.

27. Indeed, the mental abnormality is not supported by sufficient medical proof of a congenital disease or disorder as a result of a volitional impairment.

"A congenital or aquired condition, disease or disorder that effects the emotional, cognitive, or volitional capacity of a person in a manner that predisposes him or her to the commission of conduct constituting a sex offense and that results in that person having serious difficulty in controlling such conduct."

28. Under the statute, sex offenders requiring civil management is a catch all category that includes individuals subject to the act who are not individuals likely to be a danger to others and to commit sex offenses if not confined to a secured treatment facility. M.H.L. §10.03(e),(q),(r).

29. Where the phrase risk of recidivism can also be expressed as a likelihood to commit sex offenses in the future, or a person's level of dangerousness. The definition of mental abnormality logically incorporates the risk/dangerousness element.

30. Both statutes actually incorporates the "mental abnormality" phrase. So it would not matter if the mental abnormality phrase falls under M.H.L. §10.03(i) or, M.H.L. §10.03(e), there is no supporting medical proof of a volitional condition. Further, the dangerousness and a likelihood of committing future offenses (i.e., risk of reoffending) is not supported by a mental condition.

31. It is evident that circumstances of this alleged mental condition is insufficient to show by clear and convincing evidence, that a person has serious difficulty in controlling his sexual urges within the meaning of Mental Hygiene Law §10.03(i).

32. On the other hand, a person is presumed to intend the ordinary consequence of his/her acts. It is actually, the sex act in the prior conviction that is used to justify the pedophilia disorder, rather than medical proof of a mental condition. Nor is the pedophilia disorder proof of a volition impairment or mental condition.

33. Experts may agree that Actuarial Risk Assessment Instruments (ARA's), including the STATIC-99 do not diagnose a condition, disease or defect. The STATIC-99 cannot for example, diagnose paraphilia, pedophilia or antisocial personality disorder, three common diagnoses in Article 10 proceedings. They also may agree, that ARA's including the STATIC-99 cannot predict whether a particular condition predisposes a person to the commission of sex offenses. Nor is the STATIC-99 score relevant to predisposition. Moreover, some of the risk factors in STATIC-99 (i.e., relating to past sexual (conduct) identify subject area's relevant to determining predisposition, but that an actuarial score does not inform the expert as to whether the predisposition eminates from the disease itself. (perhaps because none exists).

34. For the purposes of our present inquiry, what this means is that the STATIC-99 does not distinguish between, or can it explain, the reason why a person might re-offend. Whereas the population of repeat sex offenders who formed the control group, the STATIC-99 does not differentiate between those persons who intended to commit the crime, were motivated by passion, revenge or rage, came upon a crime of opportunity, or were compelled to offend due to an inability or serious difficulty in controlling their behavior due to a disease, defect or condition. Put more simply, the STATIC-99 does not distinguish between those who are a risk of re-offending due to a lack of abnormality to control their behavior, called volitional impairment from those who are at risk of re-offending due to choice or opportunity.

35. In other words, an offender who commits forcible rapes because he cannot control himself, is no more dangerous than an offender who commits the identical rapes because his is in complete control of his actions, but chooses to rape anyway. The first offender may be confined for life upon completion of his

prison sentence. The second cannot be subject to any form of mental health supervision.

36. The statute thus requires proof of more than a mere predisposition to violence, rather, it requires evidence of past sexually violent behavior and a present mental condition that creates a likelihood of such conduct in the future if the person is not incapacitated. Kansas v. Hendricks, 521 U.S. 346, see also, Kansas v. Crane, 534 U.S. 407 (2002), there must be a showing that respondent had serious difficulty controlling sexually offending behavior in order to civilly confine him.

37. In order to commit a person involuntary in a civil proceeding, a State is required by substantive due process to prove by clear and convincing evidence that the person has both (1) a mental abnormality, and (2) a danger to himself or to others.

38. As a result of the insufficient medical proof of a congenital disease, or disorder involving a volitional impairment, the State Attorney General has failed to meet its statutory as well as its Constitutional burden of proof.

39. The State Attorney General failed to also provide sufficent medical proof involving the offender having a strong predisposition to commit sex offenses, and a likelihood to be a danger to others.

40. The State Attorney General along with psychiatric examiners, neglected to produce sufficient medical evidence of a volitional condition effecting the offender's conscience or internal braking mechanism, that would allow him or inhibit him from future pedophilia acts. Or

41. Sufficient medical proof of a disease or disorder resulting in the offender's failure to control his sexual intense urges, and fantasies toward prepubescent children, (Pedophilia). Or

42. Provide sufficient medical proof of a disease or disorder resulting in the offender having recurrent intense thoughts and fantasies, that cause a deviant maladaptive pattern of sexual arousal, (Paraphilia) Or

43. Produce sufficient medical proof of a congenital disorder resulting in the offender's deceitfulness, irritableness, aggressiveness, or irresponsibility and demonstrating a lack of remorse for harmful actions (ASPD).

44. As a result of the insufficient medical proof of a mental abnormality, the petitioner has been falsely diagnoses with ASPD, Pedophilia, Borderline Intellectual Functioning, and Alcohol Use Disorders.

45. And that such conduct was committed by persons acting under color of State Law deprived the petitioner of rights, privileges, and immunity secured by the Constitution and Laws of the United States. Petitioner has been falsely imprisoned longer than his Penal term, deprived of his liberty interest in being released, and unlawfully confined in a Mental Hospital based on psychiatric examiner Jonathan Miljus false diagnoses. A Constitutional violation that result in additional punishment, mental and emotional injury, suffered while unlawfully imprisoned and civilly confined.

46. Refer to petition for Writ of Certiorari and statement of case 1 thru 27, and reasons for granting the petition 1 thru 13.

CERTIFICATE

The grounds are limited to intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented.

I Anthony Atkinson, certify that the petition for rehearing is presented in good faith and not for delay.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: 6-30, 2022.

Anthony Atkinson
ANTHONY ATKINSON

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PROOF OF SERVICE

I, Anthony Atkinson, do swear or declare, that on this date, June 30, 2022, as required by Supreme Court Rule 29, I have served the enclosed PETITION FOR REHEARING on each party to the above proceeding or that party's counsel, by depositing an envelope containing the above documents in the United States Mail, properly addressed to each of them and, with postage prepaid for delivery with-in 3 calender days.

The names and addresses of those served are as follows:

Office of the Clerk, Supreme Court of the United States, Washington, D.C. 20543 and, United States Solicitor General's Office, Room 5614, Department of Justice, 950 Pennsylvania Ave. N.W., Washington, D.C. 20530-0001.

I, declare under penalty of perjury that the fore-going is true and correct.

Executed on 6-30, 2022.

Anthony Atkinson

ANTHONY ATKINSON, Petitioner