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No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
MAY 08 2022
OFFICE OF THE CLERK
SUPREME COURT, U.S.

MARC ANTHONY LOWELL ENDSLEY -- PETITIONER
(Your name)

vs.

CINDY BLACK -- RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Marc Anthony Lowell Endsley
(Your Name)

Napa State Hospital, 2100 Napa-Vallejo Hwy.
(Address)

Napa, CA 94558-6293
(City, State, Zip Code)

(707) 255-9637
(Phone Number)

QUESTION(S) PRESENTED

1. Can a vexatious litigant order be used to deny a writ of habeas corpus?

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:

The petitioner is Marc Anthony Lowell Endsley, a civilly detained insanity acquittee at Napa State Hospital in Napa, California. The respondent is Cindy Black, petitioner's legal custodian.

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	3
STATEMENT OF THE CASE.....	4
REASONS FOR GRANTING THE WRIT.....	6
CONCLUSION.....	9

INDEX TO APPENDICES

APPENDIX A	Decision of Ninth Circuit Court of Appeals
APPENDIX B	Order of the United States District Court for the Central District of California that the petition was not to be filed because petitioner had been branded a vexatious litigant
APPENDIX C	
APPENDIX D	
APPENDIX E	
APPENDIX F	

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<u>In re Bittaker</u> , (Cal.App. 1 Dist. 1997) 55 Cal.App.4th 1004.....	6
<u>O'Sullivan v. Boerckel</u> , (1999) [119 S.Ct. 1728, 144 L.Ed.2d 1] 526 U.S. 838.....	6
<u>People v. Endsley</u> , (2016) 248 Cal.App.4th 110.....	4
<u>People v. Endsley</u> , (2018) 28 Cal.App.5th 93.....	4
<u>Turner v. Marshall</u> , (9th Cir. 1995) 63 F.3d 807.....	6
<u>Young v. Weston</u> , (C.A.9 (Wash.) 1999) 192 F.3d 870.....	6, 7

STATUTES AND RULES	PAGE NUMBER
28 U.S.C. §2254.....	5
Americans with Disabilities Act, 42 U.S.C. §12101.....	7
California Penal Code, §1026.....	4
California Penal Code, §1026.2.....	4, 7

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

[x] For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix A 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 B 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 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 _____ 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 2-24-2022.

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 _____. A copy of that decision appears at Appendix _____.

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

This case involves Amendment I to the United States Constitution, which provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

This case involves Amendment XIV to the United States Constitution, which provides:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* * *

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

The Amendments are enforced by Title 28, Section 2254, United States Code.

The Amendments are enforced by Title 42, Section 12101(b)(4), United States Code, which provides:

[The purpose of the Americans with Disabilities Amendments Act of 2008 is] to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

STATEMENT OF THE CASE

Appellant is a civilly detained insanity acquittee committed to the California State hospital system pursuant to California Penal Code ("P.C.") Section 1026. Appellant was initially committed in 1997. In May of 2015, appellant filed a petition for conditional outpatient treatment pursuant to P.C. §1026.2. The San Bernardino Superior Court denied the petition without hearing; a violation of California law. Appellant appealed. The Fourth Appellate District reversed, saying that the hearing was a constitutional right and could not be denied. (People v. Endsley, (2016) 248 Cal.App.4th 110.) In 2017, fully one year after the order of remittitur, the Superior Court gave appellant a telephonic §1026.2 hearing. At this hearing, the Superior Court denied appellant's due process rights to an independent expert evaluator, to not be housed in jail during the court proceedings, and to testify on his own behalf. Appellant appealed. The Fourth Appellate District reversed, holding that appellant had all due process rights as asserted. (People v. Endsley, (2018) 28 Cal.App.5th 93.) Remittitur was issued in October of 2018. The Superior Court refused to comply with the remittitur order and to give appellant timely hearings consistent with the constitutional protections of due process and speedy trial. (Petitioner would not receive a hearing until October of 2021, fully 3 years after the order of remittitur. The result of that hearing is that petitioner continues to be subject to involuntary civil confinement through denial of due process and equal protection rights guaranteed by Federal authorities.)

On 12-16-2019, appellant filed a writ of habeas corpus in the State Superior Court to contest his continued civil confinement and denial of due process and equal protection rights under P.C. §1026.2. On 2-4-2020, the petition for writ of habeas corpus was denied without hearing. On 2-28-2020, appellant refiled the writ of habeas corpus in the State Court of Appeals, Fourth Appellate District, Case No. E074822. On 4-3-2020, the Court of Appeals denied the writ of habeas corpus. On 4-13-2020, appellant filed a Petition for Review in the California Supreme Court, Case No. S261655. On 6-17-2020, the California Supreme Court denied the Petition for Review. On 6-29-2020, appellant filed a Petition for Rehearing. On 7-2-2020, the California

Supreme Court refused to file the Petition for Rehearing. On 8-31-2020, appellant filed a petition for Writ of Certiorari in the U.S. Supreme Court, Case No. 20-5694. On 11-2-2020, the petition for Writ of Certiorari was denied. On 1-17-2021, appellant submitted a Federal writ of habeas corpus in the Central District pursuant to 28 U.S.C. §2254. On 2-3-2021, the Central District ordered the petition for writ of habeas corpus not be filed because petitioner had been branded a vexatious litigant on 10-16-2014 in a prior civil action under 42 U.S.C. §1983, Case No. 2:14-cv-03091-UA-SS. On 6-20-2021, Appellant filed an appeal in the Ninth Circuit Court of Appeal stating that, pursuant to controlling authority, vexatious litigant orders do not apply to writs of habeas corpus and petitioner was not required to seek leave to file such a petition. On 2-24-2022, the Ninth Circuit Court of Appeal did deny the appeal holding that it was within the scope of the vexatious litigant order to deny a writ of habeas corpus.

REASONS FOR GRANTING THE PETITION

A. Conflicts with Decisions of Other Courts.

The holdings of the courts below that vexatious litigant orders apply to writs of habeas corpus is in direct conflict with both the federal statutes and the decisions of numerous courts including this Court.

A.1. Vexatious Litigant Orders Do Not Apply To Writs of Habeas Corpus

It is well-settled by the courts that a vexatious litigant order does not apply to writs of habeas corpus because a vexatious litigant order applies only to civil actions or proceedings. In re Bittaker, (Cal.App. 1 Dist. 1997) 55 Cal.App.4th 1004, 1012 ("A petition for writ of habeas corpus is not a civil action or proceeding within the meaning of the vexatious litigant statute. Thus petitioner [...is] not required to obtain leave of the presiding judge before filing his petition for habeas corpus.") Bittaker, 55 Cal.App.4th at 1010 ("Although it may be said that habeas corpus proceedings are no longer purely 'criminal' in nature, the modern expansion of the writ has not resulted in its characterization as 'civil' rather than 'criminal' by our Supreme Court.")

In the case at bar, the lower courts had no discretion to deny petitioner's habeas petition on the basis of his having been branded a vexatious litigant, or to require petitioner to seek leave before filing such a petition.

A.2. Purpose of the Writ of Habeas Corpus

Young v. Weston, (C.A.9 (Wash.) 1999) 192 F.3d 870, 874 ("'An evidentiary hearing on habeas corpus petition is required whenever a petitioner's allegations, if proved, would entitle him to relief, and no state court trier of fact has, after a full and fair hearing, reliably found the relevant facts.' Turner v. Marshall, 63 F.3d 807, 815 (9th Cir. 1995) (internal quotation marks and citations omitted)....") O'Sullivan v. Boerckel, (1999) [119 S.Ct. 1728, 144 L.Ed.2d 1] 526 U.S. 838, 845 (Petitioner must give the State courts "one full opportunity" to decide a Federal claim by carrying out "one complete round" of the State's appellate process in order to properly

exhaust a claim). It is clear from the history of the case at bar that petitioner has given the State courts at least one full opportunity to hear his federal claims by proceeding from the Superior Court up into the State Supreme Court, and the State courts simply refused to give him hearings. (See Young v. Weston, (C.A.9 (Wash.) 1999) 192 F.3d 870, 874 ("...[Young] repeatedly attempted to present to the state courts evidence of the conditions of his confinement and the quality of treatment at the Special Commitment Center. The fact that the state courts refused to receive this evidence does not render Young's claims unexhausted").) Pursuant to both State and Federal rulings, petitioner had standing to proceed under Federal writ of habeas corpus because he had given the State courts one complete round to hear his constitutional claims, and the State courts refused to do so. Hartman v. Summers, (9th Cir. 1997) 120 F.3d 157 (where a California insanity acquittee was subject to denial of due process under P.C. §1026.2, the acquittee would have standing to challenge the constitutionality of that scheme through writ of habeas corpus); In re Reyes, (1984) 161 Cal.App.3d 656, 658-59, citing People v. Ramirez, (1979) 25 Cal.3d 260 ("For over a year the petitioner has sought, without success, to exercise his right to be afforded a duly constituted restoration of sanity hearing. Viewed from the perspective of petitioner, his right to a restoration of sanity proceeding, like the sun at the battle of Jericho, appears to be standing still. Due process demands that petitioner not languish in confinement awaiting the date, if ever, that the trial court deems it appropriate to hold a restoration of sanity hearing. [¶]The petition for writ of habeas corpus is granted").

The writ of habeas corpus exists to prevent the State from creating unlawful forms of confinement that violate the principles of the U.S. Constitution. The denial of the writ in the instant action subjects petitioner and all others in his class to involuntary civil confinement in violation of Constitution of the United States and without any means to challenge the constitutionality of the confinement scheme.

B. Importance of the Questions Presented.

This case presents a fundamental, constitutional question concerning the right of access to the courts and the scope of the vexatious litigant statute. The question presented is of great

public importance because it affects the use of the writ of habeas corpus in all 50 states, the District of Columbia, and hundreds of city and county mental health facilities to challenge unlawful confinement. Congress, through the Americans with Disabilities Act ("ADA"), has recognized the persistent problem civilly detained persons have faced in the recognition of their civil rights. 42 U.S.C. §12101(a)(4) ("unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination"). In view of the difficulties that civilly detained persons have in pursuing redress of such discrimination, guidance on the question is of great importance because it affects the ability of civilly detained persons to challenge the constitutionality of State civil commitment schemes where those schemes deny Federal constitutional rights. An affirmation of the lower courts' rulings in this case would mean that civilly detained persons could have no means to challenge unlawful civil confinement schemes regardless of whether or not those schemes comply with constitutional protections -- entire classes of civil detainees could be held without hearings, denied the due process protections supposedly guaranteed to all classes of civilly detained persons, denied equal protection of the laws, etc. Petitioner has, in fact, been denied all of these, and the lower courts have refused to hear his constitutional questions.

The importance of the issue is further enhanced by the fact that the courts below have engaged in a radical departure from the rule of law in applying vexatious litigant orders to writs of habeas corpus.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Dated: 5-8-2022

Respectfully submitted,



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