No. 22-1013

In the Supreme Court of the United States

J.R.,
Petitioner,
v.
NORTH CAROLINA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

BRIEF IN OPPOSITION

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QUESTION PRESENTED

In the proceeding below, the Petitioner was committed to a private mental-health facility for treatment. At his commitment hearing, no counsel appeared to advocate for commitment. The case for commitment was instead made by one of Petitioner's treating physicians, who testified as a witness. During the hearing, the presiding judge asked neutral and even-handed questions to facilitate the presentation of evidence.

The question presented is whether it necessarily violates due process when judges call and question witnesses at commitment hearings where no counsel advocates for commitment.

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INTRODUCTION

This case began when one of Petitioner J.R.'s treating physicians at Duke University Medical Center requested that a state court order J.R. committed for thirty days to treat his mental illness. Counsel represented J.R. at the hearing and argued against commitment. No counsel, however, appeared on behalf of J.R.'s physicians. The case for commitment was instead made by one of J.R.'s treating physicians, who testified from the witness stand.

At the commitment proceeding, the trial judge asked a handful of basic, open-ended questions to facilitate the orderly presentation of evidence by J.R.'s doctor. J.R. argued that this arrangement violated his due process right to an impartial tribunal. The North Carolina Supreme Court rejected his argument. The court agreed with J.R. that it would violate due process for a judge to step into the role of advocate for commitment. But it held that the trial judge here had not done so.

J.R. now seeks this Court's review, asking this Court to resolve whether judges lose their impartiality when they act as "advocate[s] for incarceration." Pet. at i. But that question is not implicated in this case. Below, the North Carolina Supreme Court held that, on the particular facts of this case, the trial court did not act as an advocate for commitment.

In any event, this case-specific holding does not create any division of authority. Everyone agrees that

judges cannot serve as advocates for commitment. The court below merely held that judges do not *automatically* lose their impartiality when a petitioner for commitment is not represented by counsel. J.R. fails to show a division of authority on that issue or any other.

J.R. also claims that review is needed because the decision below is inconsistent with this Court's due process precedents. He suggests that this Court has adopted a bright line rule that due process is automatically offended if a testifying witness, and not counsel, makes the case for depriving someone of their liberty. But no such bright line rule exists. This Court has previously approved such procedures, including in situations when liberty is at stake.

For these reasons, the petition for a writ of certiorari should be denied.

STATEMENT

A. J.R. is committed by a state trial court for treatment of his mental illness.

In late 2019, J.R. was found unconscious on a street in Durham, North Carolina, after he had suffered a seizure. He was taken to the emergency room at Duke University Medical Center, where he began displaying manic symptoms. After witnessing these symptoms, one of J.R.'s treating physicians at Duke filed a petition in state court requesting that J.R. be committed for treatment of his mental illness. Pet. App. 3a; *see* N.C. Gen. Stat. § 122C-261 (allowing private persons to petition for commitment of others).

J.R. contested his doctor's petition at a hearing before a state trial court. *See* N.C. Gen. Stat. §§ 122C-268, 122C-271. At that hearing, J.R. was represented by counsel. No counsel, however, appeared to advocate for commitment. Pet. App. 3a.

Under North Carolina law, counsel for the State must appear at any hearing concerning a commitment at a state facility. N.C. Gen. Stat. §§ 122C-268(b), 122C-270(f). For persons held for treatment at private facilities like Duke, however, counsel for the State is under no statutory obligation to appear. *Id.* § 122C-268(b).[1]

As commentators recognize, where counsel does not appear to advocate for commitment, judges may call and question witnesses themselves. 4 Hooper Lundy & Bookman, *Treatise on Health Care Law* § 20.04[7][e][i] (Alexander M. Capron & Irwin M. Birnbaum, eds., rev. ed. 2023). In keeping with that practice, when no counsel appeared to argue for commitment at J.R.'s hearing, the state court called

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[1] J.R. suggests that North Carolina is an outlier in not always requiring counsel to appear to argue for commitment. *See* Pet. at 4-6, 21-22. But North Carolina is not alone in this practice. *See, e.g.*, Conn. Gen. Stat. §§ 17a-498, 17a-525 (not always requiring counsel to appear). J.R. also overstates how many states require counsel to appear to advocate for commitment in all situations. *See* Pet. at 4 n.1. At least three of the states that he claims do so actually do not. *See In re the Commitment of A.W.D.*, 861 N.E.2d 1260, 1263 (Ind. Ct. App. 2007) (holding that Ind. Code § 12-26-2-5 does not always require counsel to appear); *In re R.P.*, 606 N.W.2d 15, 18 (Iowa 2000) (holding that Iowa Code § 125.82 does not always require counsel to appear); Ariz. Rev. Stat. § 36-503.01 (only requiring state or county counsel to appear when officials at public facilities seek commitment).

one of J.R.'s treating physicians at Duke, Dr. Sandra Brown, to testify. Pet. App. 4a. When Dr. Brown took the stand, the court asked her to "tell [the court] what [she wanted the court] to know about the matter." Pet. App. 4a. She testified that J.R. suffered from bipolar disorder and had been experiencing manic episodes. She then stated that J.R.'s physicians were seeking commitment because if J.R. did not receive inpatient treatment, he would pose a risk to himself. Pet. App. 4a-5a.

J.R.'s counsel cross-examined Dr. Brown. After J.R.'s counsel concluded, the court asked Dr. Brown if she believed that J.R. was a danger to himself. She responded in the affirmative. The court then asked Dr. Brown for how long she was seeking to have J.R. committed, and she responded that J.R.'s medical team was asking for thirty days. Pet. App. 5a.

J.R.'s counsel then called J.R. as a witness to testify on his own behalf. Once J.R. had concluded his testimony, his counsel made a closing argument against commitment. Pet. App. 6a. After hearing from counsel, the court ruled that J.R. was mentally ill and a danger to himself. *See* N.C. Gen. Stat. § 122C-271(b)(2) (allowing dangerous, mentally ill persons to be committed). The judge ordered him committed for up to thirty days. Pet. App. 6a-7a.

B. J.R.'s commitment is affirmed on appeal.

On appeal, J.R. claimed that he had been denied due process during his commitment hearing. He argued that the trial judge had "violated his [due process] right to an impartial tribunal by assuming

the role of prosecutor" by advocating for commitment. Pet. App. 35a.[2]

The North Carolina Court of Appeals rejected J.R.'s argument. Pet. App. 35a. The court explained that courts do not automatically become advocates for commitment when the case for commitment is made by a testifying witness, not counsel. Pet. App. 50a. It therefore rejected J.R.'s due process argument and affirmed his commitment order.

The North Carolina Supreme Court affirmed. At the outset, the court agreed that J.R. has a due process right to have his case resolved by an "independent decisionmaker" that "did not advocate for or against . . . commitment." Pet. App. 10a, 15a. The court went on to hold, however, that the judge who heard his case had not improperly advocated for commitment in the circumstances here. Pet. App. 11a. The judge had not, for example, asked questions seeking "to impeach any witnesses." Pet. App. 13a. Instead, the judge had simply called "the witness from [Duke] to testify" and asked neutral questions designed to facilitate an orderly process, such as "asking the witness to 'tell [the court] what [she wanted the court] to know about this matter.'" Pet. App. 13a, 15a. Such "even-handed questions," the court held, do not violate due process. Pet. App. 15a.

The state supreme court also held that J.R. had received, as due process requires in this context, an

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[2] On appeal, the North Carolina Attorney General appeared to represent the State's interests, as required by statute. *See* N.C. Gen. Stat. § 122C-272.

adversarial hearing. Pet. App. 11a-12a. That was so, the court held, because J.R. was not committed based on a judicially managed investigation, but rather on "facts" and "arguments" developed by the "parties" in his case, such as his doctors at Duke. Pet. App. 12a.

REASONS FOR DENYING THE PETITION

I. The Decision Below Does Not Create a Lower Court Conflict.

In his petition, J.R. asks this Court to answer whether "when a person's liberty is at stake, the right to an impartial judge . . . is violated where the trial judge also performs the role of the advocate for incarceration." Pet. at i. But that issue is not implicated in this case. Below, the North Carolina Supreme Court explicitly held that the trial judge who heard J.R.'s case "did not advocate for or against" his commitment. Pet. App. 15a. This case therefore does not raise the issue that J.R. asks this Court to review.

In any event, J.R. has not identified any split of authority on this question. J.R. claims that the decision below creates a split, both for involuntary commitment cases and for other cases where liberty is at stake. He is mistaken on both fronts.

A. The decision does not create a conflict in the commitment context.

J.R has not identified any division of authority on the question he asks this Court to review: whether judges may "advocate for" commitment. Pet. at i. All the cases that J.R. cites, including the decision below,

agree that judges cannot serve as advocates for commitment.

Below, the North Carolina Supreme Court joined this consensus when it held that commitment proceedings must be decided by "independent decisionmaker[s]." Pet. App. 10a; *see also A.W.D.*, 861 N.E.2d at 1264 (recognizing that "judge[s] may not assume . . . adversarial role[s]"); *In re Miller*, 672 N.E.2d 675, 676 (Ohio Ct. App. 1996) (acknowledging that "magistrate[s] may [not] act as . . . advocate[s]"). The court below specifically held that judges hearing these cases may not act as both "accuser[s] and adjudicator[s]." Pet. App. 14a. Thus, J.R. does not identify any split on the question of whether judges can "advocate" for commitment. Pet. App. 15a. Everyone agrees that they cannot.

To the extent that J.R. asks this Court to address whether judges *necessarily* become advocates when "[n]o attorney appear[s] to make the case for commitment," Pet. at 13, no split would exist on that question either.

To try to demonstrate a split, J.R. relies on the Iowa Supreme Court's decision in *In re S.P. See id.* at 13-14 (citing 719 N.W.2d 535 (Iowa 2006)). There, the court held that a judge had offended due process by becoming an advocate for commitment when no counsel argued for that relief. 719 N.W.2d at 539. The Iowa Supreme Court, however, did not adopt a per se rule establishing that judges *always* become advocates whenever, in the absence of counsel, they "call[ ] and question[ ] the witnesses in favor of

commitment." Pet. at 13. Rather, the court held that judges remain impartial so long as they do "not display any evidence of becoming an advocate by such actions as extensive questioning, leading of the witness, or cross-examination of the respondent." *S.P.*, 719 N.W.2d at 539 (citing *R.P.*, 606 N.W.2d at 17). That holding aligns with the decision of the North Carolina Supreme Court. As the court below similarly held, courts remain impartial so long as they do "not advocate for or against . . . involuntary commitment," but rather only ask "neutral" and "even-handed" questions. Pet. App. 15a.[3]

Thus, at best, J.R. has shown that courts have reached different decisions based on the different facts and circumstances presented in individual cases. These divergent, fact-specific outcomes do not

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[3] J.R. also cites terse decisions from intermediate appellate courts in Florida and New Jersey to try to show a split. Pet. at 14 (citing *R.S. v. C.P.T.*, 333 So. 3d 1190 (Fla. Dist. Ct. App. 2022), and *In re Raymond S.*, 623 A.2d 249 (N.J. Super. Ct. App. Div. 1993)). But these states have statutes that *require* counsel to appear and advocate for commitment. *See id.* at 5 n.1. When judges disregard those statutes, that disregard raises distinct issues about judicial favoritism that are not presented by the decision below. Indeed, the New Jersey decision that J.R. cites expressly holds that the party there had been denied the "due process afforded him by . . . *statutes and court rules*." *Raymond S.*, 623 A.2d at 252 (emphasis added). Furthermore, like the North Carolina Supreme Court below, Florida courts have recognized that judges in commitment hearings remain impartial when no counsel appears before them, so long as they question witnesses "in an impartial and neutral manner." *Jordan v. State*, 597 So.2d 352, 353 (Fla. Dist. Ct. App. 1992).

establish any division of authority at all, let alone one worthy of this Court's review.

In any event, the decisions cited by J.R. to show a split do not even ground their holdings in the United States Constitution. *S.P.*, 719 N.W.2d at 540 (not specifying whether court was relying on the state or federal constitution); *R.S.*, 330 So.3d at 1191 (same); *Raymond S.*, 623 A.2d at 252 (same). Nor do these decisions analyze or even cite this Court's precedents that address when judges become impermissibly partial under the Fourteenth Amendment's Due Process Clause. *Compare S.P.*, 719 N.W.2d at 539-40, *and R.S.*, 330 So.3d at 1191-92, *and Raymond S.*, 623 A.2d at 250-52, *with* Pet. at 17-21. In fact, it appears that the only decision that has ever analyzed those precedents in the commitment context is the decision below. *See* Pet. App. 10a-15a (discussing cases like *Williams v. Pennsylvania*, 579 U.S. 1 (2016), *McNeil v. Wisconsin*, 501 U.S. 171 (1991), *Withrow v. Larkin*, 421 U.S. 35 (1975), *Richardson v. Perales*, 402 U.S. 389 (1971), and *In re Murchison*, 349 U.S. 133 (1955)). Given the lack of any prior application of these precedents in this context, no split can possibly exist on the federal law question that J.R. asks this Court to review.

Thus, J.R. has failed to show any split with respect to the federal due process standards that govern commitment proceedings.

B. The decision does not create a conflict in other contexts either.

Looking beyond the commitment context, J.R. also claims that the decision below opened a division of authority on whether courts can serve as "the state's attorney" when "a person's liberty is at stake." Pet. at 15.

Once again, however, this case does not implicate this purported split. In the proceedings below, it is not even *possible* that a court could have served as an advocate for the State. J.R.'s commitment was not initiated by the State, but rather by his doctors at Duke. Pet. App. 3a-4a, 15a. Moreover, in the state supreme court, J.R. expressly waived any argument that only the State can be "responsible for prosecuting involuntary commitment cases." Resp't-Appellant's New Br. at 2, Dec. 20, 2021. This case therefore does not present the issue of whether courts can permissibly serve as "the state's attorney." Pet. at 15.

Even disregarding that issue, however, J.R. once again fails to demonstrate any division of authority.

First, J.R. argues that the North Carolina Supreme Court broke with the Washington and California supreme courts. *Id.* at 17 (citing *State v. Moreno*, 58 P.3d 265 (Wash. 2002), and *People v. Carlucci*, 590 P.2d 15 (Cal. 1979)). He claims that these courts have held that, "for traffic infractions, where a person's liberty is not at stake," judges may "perform the role of the absent prosecutor." *Id.* at 17.

J.R. misstates what the Washington and California supreme courts actually held. These courts did not hold that judges necessarily take on a prosecutorial role when testifying witnesses, not counsel, appear before judges to seek relief. They rather held that, regardless of whether liberty is at stake, judges do not take on a prosecutorial role so long as judges "refrain from advocacy" and ask "neutral questions." *Carlucci*, 590 P.2d at 21; *Moreno*, 58 P.3d at 271. These holdings align perfectly with the decision below. *See* Pet App. 10a, 14a, 15a.

Second, J.R. argues that the decision below broke with six courts that have held that certain judges "violate[d] the Due Process Clause by taking on the role of the state's attorney" when "a person's liberty [was] at stake." Pet. at 15. J.R. is right that these cases held that the judges in question violated due process by improperly taking on a prosecutorial role after counsel did not appear. *Id.* at 15-16. All six cases, however, involved circumstances that differ markedly from those here.

For example, in *Figueroa Ruiz v. Delgado*, the First Circuit read a Puerto Rico statute *to require* judges to act as prosecutors by mandating that judges take steps like "discredit[ing] and impeach[ing]" witnesses, necessarily resulting in a due process violation. 359 F.2d 718, 719 n.3 (1st Cir. 1966); *see also Moreno*, 58 P.3d at 271 (distinguishing case on same basis). Here, of course, state law imposes no such requirement. *See* N.C. Gen. Stat. §§ 122C-268, 122C-270, 122C-271. Similarly, in *People v. Martinez*, the Colorado Supreme Court held that a judge had

assumed "the role of advocate for the prosecution" after he took steps like making "objections to defense counsel's questions." 523 P.2d 120, 120-21 (Colo. 1974); *see also Moreno*, 58 P.3d at 271 (distinguishing case on same basis). Nothing similar occurred below; the North Carolina Supreme Court rather recognized that the judge at J.R.'s hearing did not become an advocate through any steps like "impeach[ing] . . . witnesses" or otherwise. Pet. App. 13a.

J.R.'s other cases are distinguishable as well. In *Giles v. City of Prattville* and *Wounded Knee v. Andera*, there was no dispute that the judges served as prosecutors. *See* 556 F. Supp. 612, 614 n.1 (M.D. Ala. 1983) (city acknowledged that its judges were "also act[ing] as prosecutor[s]"); *Wounded Knee*, 416 F. Supp. 1236, 1237 (D.S.D. 1976) (judge recognized that he was acting "as both arbiter and prosecutor"). Here, as the North Carolina Supreme Court held, the trial judge did not take on the role of the prosecutor. Pet. App. 12a.

Finally, in J.R.'s two remaining cases, *United States v. Neal* and *Cromer v. Kraft Foods North America, Inc.*, when the judges there decided to proceed without counsel, that choice required them to "investigate[ ]" facts "through extrajudicial means." 101 F.3d 993, 998 (4th Cir. 1996); *see also* 390 F.3d 812, 820-21 (4th Cir. 2004). The judge here, in contrast, "did not function as an investigator." Pet. App. 15a.

Thus, J.R. fails to identify any split of authority, either in the commitment context or more broadly.

II. The Decision Below Was Correct.

The petition should also be denied because the decision below was rightly decided. J.R. claims otherwise, arguing that the decision below wrongly allows judges to "advocate" in favor of depriving persons of their personal liberty. Pet. at 17.

J.R. is again mistaken. The court below did not hold that judges can serve as advocates. It held the opposite. *See* Pet. App. 10a, 14a. Moreover, J.R. is wrong to imply that this Court's precedents establish a "bright line" rule that judges *automatically* become advocates if no counsel appears to advocate for curtailing a person's liberty. *See* Pet. at 17.

Take, for example, this Court's decision in *Richardson v. Perales*, 402 U.S. 389. J.R. faults the state supreme court for citing *Perales* below, Pet. at 19, but that case helps to shows the folly of J.R.'s arguments here. The claimant in *Perales* argued that due process is automatically offended when no counsel for the government appears at a social security benefits hearing to advocate for the denial of benefits. 402 U.S. at 408-09. That non-appearance, the *Perales* claimant argued, necessarily requires adjudicators to "make the Government's case as strong as possible." *Id.* This Court disagreed. It made clear that this arrangement did not force adjudicators to "act as counsel" for the government. *Id.* at 410.[4]

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[4] *See also* Reply Brief for the Petitioner at 6 n.2, *Perales*, 402 U.S. 389 (No. 108) (noting that no counsel appeared to represent the government in the proceedings at issue in *Perales*).

It is true that *Perales* did not involve a deprivation of liberty. But even when liberty is at stake, this Court has blessed procedures where the government's interests are represented by testifying witnesses, not counsel. For example, in *Vitek v. Jones,* this Court held that inmates facing transfer to mental-health facilities must be afforded commitment hearings with "independent decisionmaker[s]," because such transfers implicate their "liberty." 445 U.S. 480, 495-96 (1980); *see also* Pet. at 12, 19 (arguing that *Vitek* provides guidance on what process is due in commitment cases). This Court further held that the procedures for these hearings should be similar to those in parole revocation hearings, where liberty is also at stake. *Vitek*, 445 U.S. at 496 (citing *Morrissey v. Brewer*, 408 U.S. 471 (1972)). That comparison is telling here: In parole revocation hearings, it is common for the government to be represented only by a testifying parole officer—not by counsel. *See Gagnon v. Scarpelli*, 411 U.S. 778, 789 (1973).[5]

These holdings show that J.R. is simply incorrect that this Court's precedents create a "bright line" rule that adjudicators necessarily take on an improper prosecutorial role when testifying witnesses, and not

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[5] *See also* Neil P. Cohen, *Law of Probation & Parole* § 21:3 (2d ed. 2022) (noting that revocation hearings sometimes dispense with "the presence of a law trained prosecutor"); Wis. Dep't of Corr., *Electronic Case Reference Manual* 489 (2020), https://tinyurl.com/wbocr (providing for agent at hearing to justify revocation through agent's own testimony); Va. Parole Bd., *Policy Manual* 20-21 (2006), https://tinyurl.com/vpbpm (providing for parole board or representative to conduct hearing and take testimony from witnesses).

counsel, ask for personal liberty to be curtailed. Pet. at 17. He therefore fails to show that the decision below conflicts with this Court's precedents concerning judicial impartiality.

J.R. also relatedly claims that he did not receive an "adversarial proceeding," as this Court's cases require. *Id.* at 19. Below, however, J.R. expressly disavowed any argument that "the absence of counsel for a party necessarily renders a proceeding non-adversarial, or that his [own] particular commitment hearing 'lost' its adversarial nature because the [State did not] send counsel." Resp't-Appellant's Reply Br. at 25, May 2, 2022.

That disavowal made sense. As the court below correctly held, J.R. received an adversary hearing here. This Court has held that what makes a hearing "adversarial rather than inquisitorial is not the presence of counsel." *McNeil*, 501 U.S. at 181 n.2. Instead, the decisive question is whether judges resolve cases "on the basis of facts and arguments . . . adduced by the parties," not their own "factual and legal investigation." *Id.*

Below, the North Carolina Supreme Court expressly applied this holding to determine that J.R. received an adversarial hearing. The court explained that the trial judge "decided [J.R.'s case] on the basis of facts presented at [his] hearing and arguments of the parties," including J.R.'s medical team at Duke. Pet. App. 12a. That is, the court held—as a matter of state procedural law—that his team participated *as a party* in his case by petitioning for commitment and

then providing the evidence in favor of that relief through testimony. J.R. therefore had an adversarial hearing: The judge decided J.R.'s case "on the basis of facts and arguments . . . adduced by the parties," not on the basis of a judicial investigation. *McNeil*, 501 U.S. at 181 n.2.

J.R. has therefore failed to demonstrate any error in the decision below that could possibly justify review by this Court.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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