Cause No. 22-6496

ORIGINAL

In The
Supreme Court of the United States

Lonnie Kade Welsh,

Petitioner

versus

Bryan Collier, Joni White, Valencia Pollard-Fortsan, Rachel Nowlin, Katherine Rediskez, Marsha McLane, Cynthia Tilley, April Thompson, Marissa Bartholet, and Tara Burson

Defendants

On Petition for a Writ of Certiorari from the
United States Court Of Appeals For the
Fifth Circuit Cause No. 21- 50878

Petitioner: Pro Se
Lonnie Kade Welsh
2600 South Sunset Ave.
Littlefield, Tx 79339

Respondent: Bryan Collier, Joni White, Cynthia Tilley, April Thompson, Marissa Bartholet, and Tara Burson
861 A. IH 45 N.
Huntsville, Tx 77320

Valencia Pollard-Fortsan, Rachel Nowlin, Katherine Rediskez
3201 FM 929
Gatesville, Tx 76597

Marsha McLane
4616 W. Howard Ln. Bld. 2 Suite 350
Austin, Tx 78728

I. Question Presented

Lonnie Kade Welsh was civilly committed as a sexually violent predator under a State of Texas mental illness. This illness distinguished him from those who can be held morally blameworthy in the state. He then went to prison for over a year and a half until he was fully acquitted, by the Court of Appeals. The State petitioned for review which was declined by the Texas Supreme Court. Lonnie Kade Welsh was released 33 days later after the lower court certified its order. The question presented are as follows:

1. Does an individual who has been diagnosed with a state created psychological disorder have a right to treatment equal to those who the medical community has diagnosed for conventional psychological treatment?

2. If a person is acquitted of false criminal charges and the highest court in state has declined review what is a reasonable time for release from the prison?

II. List of Parties and Related Cases

Parties:

1. Bryan Collier
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   Huntsville, Tx 77320

2. Joni White
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3. Valencia Pollard-Fortsan
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4. Rachel Nowlin
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5. Katherine Rediskez
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6. Marsha McLane
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7. Cynthia Tilley,
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8. April Thompson,
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9. Marissa Bartholet
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10. Tara Burson
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Attorney For Marsha McLane, Bryan Collier, Joni White, Cynthia Tilley, April Thompson, Marissa Bartholet, and Tara Burson

Attorney for Respondent Valencia Pollard-Fortsan, Rachel Nowlin, and Katherine Rediskez

Related case:

Welsh v. Collier 1:20-CV-337 Western District of Texas Austin Division

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VI. Petition for Writ Of Certiorari

Lonnie Kade Welsh, an individual currently civilly committed as a Sexual Violent Predator at the Texas Civil Commitment Center in Littlefield, Texas, respectfully petitions this court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

VII. Opinions Below

The decision by the United States Court of Appeal for the Fifth Circuit has not been designated for publication. The Fifth Circuit cause no. was 21-50878 decided on October 4, 2022.

VIII. Jurisdiction

The petition for writ of certiorari is timely filed within 90 days under United States Supreme Court Rule 13(1). This Court's jurisdiction is extended under statutory authority 28 U.S.C. § 1254, which allows discretionary jurisdiction from a decision of the United States Court of Appeals.

IX. Constitutional and Statutory Provisions Involved

United States Constitutional Amendment 14 Sec. 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.

United States Constitutional Amendment 4th :
The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

United States Constitutional Amendment 8 Bail—Punishment. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Texas Health and Safety Code Sec. 841.001. Legislative Findings:
The legislature finds that a small but extremely dangerous group of sexually violent predators exists and that those predators have a behavioral abnormality that is not amenable to traditional mental illness treatment modalities and that makes the predators likely to engage in repeated predatory acts of sexual violence. The legislature finds that the existing involuntary commitment provisions of Subtitle C, Title 7, are inadequate to address the risk of repeated predatory behavior that sexually violent predators pose to society. The legislature further finds that treatment modalities for sexually violent predators are different from the traditional treatment modalities for persons appropriate for involuntary commitment under Subtitle C, Title 7. Thus, the legislature finds that a civil commitment procedure for the long-term supervision and treatment of sexually violent predators is necessary and in the interest of the state.

Texas Health and safety Code Sec. 841.002(2):
"Behavioral abnormality" means a congenital or acquired condition that, by affecting a person's emotional or volitional capacity, predisposes the person to commit a sexually violent offense, to the extent that the person becomes a menace to the health and safety of another person.

Texas penal Code Sec. 8.01. Insanity. (a) It is an affirmative defense to prosecution that, at the time of the conduct charged, the actor, as a result of severe mental disease or defect, did not know that his conduct was wrong.
(b) The term "mental disease or defect" does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

X. Statement of the Case

The United States Court of appeals for the Fifth Circuit opinion in this case was vanilla as it simply stated that it agreed with the district court's Western District of Texas, Austin Division holdings.

The District Court's opinion reasoned by Federal Rule of Civil Procedure 12(b)(6) that Welsh did not state a claim against defendants Rachel Nowlin or Katherine Rediskez because Welsh had refused anger management and that for reason that Petitioner's mental illness is not the type of mental illness the Eighth Amendment Protects. The District Court equated the treatment for Welsh's Behavioral Abnormality as a request for rehabilitation.

Similarly the court found by Summary Judgment for qualified immunity that defendant Tara Burson, Marissa Bartholet, and April Thompson were entitled to

qualified immunity stating that the Eighth Amendment does not protect Welsh's mental illness and in any event the denial or delay of treatment was due to policy.

Additionally, the district court Dismissed claims against Marsha McLane and Bryan Collier for failure to protect him from being punished in a Texas Prison. The District Court held that neither McLane or Collier could be held liable in either official or individual capacity stating there is a legal difference between criminal insanity and the Sexual Violent Predator statute.

Finally, the District Court found that Bryan Collier was entitled to qualified immunity stating that Welsh has not shown person involvement to deny him treatment; that it was an open question in the Fifth Circuit if treatment for sex offenders was required by the Constitution of the United States; and due to policy that requires a mandate from either a Court of Appeal or Texas Criminal Court of Appeals the delay from July 3, 2019 to August 6, 2019 after the Texas Criminal Court of Appeals denied the State's Petition for Discretionary Review holding Welsh in a prison for the Seventh Court of Appeal to affirm its ruling issuing a mandate on August 2, 2019 the release on August 6 was reasonable.

However, Petitioner contended that the court did not take the contents of Welsh's complaint as true to rule against him on the Federal Rule of Civil Procedure 12(b)(6) motion that Welsh had asked the defendants Rachel Nowlin and Katherine Rediskez to help him with the other mental factors that establishes a

behavioral abnormality or in any event that it was improper to distinguish Welsh's mental disease from other mental diseases for the purpose of treatment. . Welsh argued that the treatment provider was to establish and tailor the treatment to the mental illness just the same as any other mental illness. The District Court further found that Welsh did not have a liberty interest in being free from civil commitment.

Similarly Welsh made the same argument against defendants Tara Burson, Marissa Bartholet, and April Thompson that it was improper to distinguish a difference between Welsh's mental illness and other mental illnesses. Welsh argued that the treatment provider was to establish and tailor the treatment to the mental illness just the same as any other mental illness. Likewise, Welsh pointed out that a policy established by Defendant Collier established personal liability and that it falls in line with invidious discrimination to grant qualified immunity because the treatment needed for Welsh's mental illness was sex offender treatment, that the calculus does not change because of the treatment modality for the mental disease. The District Court further found that Welsh did not have a liberty interest in being free from civil commitment.

The Failure to protect claim turned on this courts prior holdings concerning Sexual Violent Predators. Moreover, Welsh claimed the Sexual Violent Predator statute should be read in pari materia with Texas criminal insanity statutes or in

any event that the mental disease precludes moral responsibility, therefore, the State was judicially estopped from making a different conclusion until Welsh was released from civil commitment. Welsh argued that he cannot and should not be criminal convicted in the State of Texas until he is released from civil commitment.

Finally, Welsh argued that its was an abuse of the judicial process, violated Welsh's Fourth Amendment right to an unreasonable seizure and his Fourteenth Amendment liberty interest for the Texas Department of Criminal Justice to have a policy that forces an individual to stay in confined in prison after the highest state court denied review from a lower court's acquittal of the inmate.

XI. Reasons for granting the Writ

Petitioner respectfully prays the Court grants this Writ of Certiorari to review the judgment of the United States Fifth Circuit Court of Appeals, to bring conformity within the Constitutional law as this case deals with issues that are contrary to this courts prior opinion, contrary to the Fifth Circuit's own precedents, and a novel question of Constitutional law that should be answered in the first instance by this court.

Issue One: Does an individual who has been diagnosed with a state created psychological disorder have a right to treatment equal to those who the medical community has diagnosed for conventional psychological treatment?

This case presents a novel question of Constitutional law that should be answered in the first instance by this Court. Does an individual who has a sever mental abnormality that confines him in a state civil commitment center. He is confined because of the state's defining a complex area of mental health. The question is does he have the same right to treatment as other mentally ill individuals. This Court has recognized this type of abnormality to be akin to insanity with the individual experiencing serious difficulty in controlling his behavior.

Moreover, Other United States Courts of Appeals circuits have recognized a need for treatment for the sexual offender. Similarly, most circuits recognize the need to give mental health treatment to those who are in need under the Eighth and the Fourteenth Amendment. The United States Supreme Court has determined that this type of illness even though state defined is a major illness no mater the nomenclature used to define the illness. See Kansas v. Hendricks 521 U.S. 346; Kansas v. Crane 534 U.S. 407; Seling v. Young 531 U.S. 250; and United States v. Comstock, 560 U. S. 126 (2010).

This Court has "never required state legislatures to adopt any particular nomenclature in drafting civil commitment statutes. Rather, we have

traditionally left to legislators the task of defining terms of a medical nature that have legal significance." Id., at 359

Specifically, the Hendricks court said that the defined illness, "coupled proof of dangerousness with the proof of some additional factors such as 'mental illness' or 'mental abnormality'" Hendricks supra 521 U.S. at 358. This proof of additional factors of mental illness is "a condition the psychiatric profession itself classifies a serious mental disorder." Id at 360.

Crane stated that "our cases suggest that civil commitment of dangerous sexual offenders will normally involve individuals who find it particularly difficult to control their behavior-in the general sense described above. Crane supra 534 U.S. at 414- 415; (citing Seling v Young, 531 US 250, 256 (2001); Able & Rouleau, Male Sex Offenders, in Handbook of Outpatient Treatment of Adults: Nonpsychotic Mental Disorders 271 (M. Thase, B. Edelstein, & M. Hersen eds. 1990) (sex offenders' "compulsive, repetitive, driven behavior . . . appears to fit the criteria of an emotional or psychiatric illness")).

Further, the Crane Court stated that "[h]ere, as in other areas of psychiatry, there may be 'considerable overlap between a . . . defective understanding or appreciation and . . . [an] ability to control . . . behavior. Nor, when considering civil commitment, have we ordinarily distinguished for constitutional purposes among volitional, emotional, and cognitive impairments.'" Crane supra 534 U.S. at

415; (citing American Psychiatric Association Statement on the Insanity Defense, 140 Am. J. Psychiatry 681, 685 (1983) (discussing "psychotic" individuals)); See also Specht v Patterson, 386 US 605, 610 N. 3 (1967) ("A person found to have a "psychopathic personality" would be committed, just as a person found to be insane."); Hendricks supra at 368 – 369(holding a SVP is "afforded the same status as others who have been civilly committed; recommended treatment if such is possible; and permitted immediate release upon a showing that the individual is no longer dangerous or mentally impaired,").

In this context the Fifth Circuit has related a comparison stating that "[m]ost psychotic persons who fail a volitional test would also fail a cognitive test," United States v. Lyons 731 F.2d 243, 249 (5th Cir. 1984 (en banc); See Texas Health and Safety Code 841.002(2) (""Behavioral abnormality" means a congenital or acquired condition that, by affecting a person's emotional or volitional capacity, predisposes the person to commit a sexually violent offense, to the extent that the person becomes a menace to the health and safety of another person.").

Texas has "wide discretion to pass legislation in areas where there is medical and scientific uncertainty." Gonzales v. Carhart 550 U.S. 124, 163 (2007) This allowed Texas to "take measures to restrict the freedom of the dangerously mentally ill." Hendricks supra 521 U.S. at 363.

When drafting the behavioral abnormality as a mental illness Texas was not required, "to adopt any particular nomenclature when drafting" the illness. id at 359. But in in many respects what constitutes a behavioral abnormality are mental "conditions the psychiatric profession itself classifies as a serious mental disorder." id at 360.

The circuit courts seem to be split upon the issue for treatment. Compare Sharp v. Weston, 233 F.3d 1166, 1172 (9th Cir. 2000) (finding due process right to mental health treatment for persons civilly committed as sexually violent predators), and Allison v. Snyder, 332 F.3d 1076, 1079 (7th Cir. 2003) (holding civilly confined pre-trial detainees charged with sex offenses are "entitled to some kind of treatment"), with Strutton v. Meade, 668 F.3d 549, 557 (8th Cir. 2012) (finding no "fundamental due process right to sex offender treatment").

However, some courts would determine that transsexuals how would require hormone therapy despite the classification of transsexual which is not your typical psychological disorder is protected by the Eighth Amendment. The circuit courts have stated this sexual identity disorder states a serious medical need raising Eighth Amendment considerations. See Cuoco v. Moritsugu, 222 F.3d 99, 103 (2d Cir. 2000); White v. Farrier, 849 F.2d 322, 325 (8th Cir. 1988); Meriwether v. Faulkner, 821 F.2d 408, 413 (7th Cir. 1987); Supre v. Ricketts, 792 F.2d 958, 963 (10th Cir. 1986)

Even in the context of the typical mental health illness the Fifth Circuit has stated that "mental health needs are no less serious than physical needs." Gates v. Cook, 376 F.3d 323, 335 (5th Cir. 2004). Here they are not alone. See Rogers v. Evans, 792 F.2d 1052, 1058 (11th Cir. 1986); Hoptowit v. Ray, 682 F.2d 1237, 1253 (9th Cir. 1982); Terrance v. Northville Regional Psychiatric Hosp., 286 F.3d 834, 844 (6th Cir. 2002); Wellman v. Faulkner, 715 F.2d 269, 272 (7th Cir. 1983), cert. denied, 468 U.S. 1217, (1984); Ramos v. Lamm, 639 F.2d 559, 574 (10th Cir. 1980), cert. denied, 450 U.S. 1041, (1981); Inmates of Allegheny County Jail v. Pierce, 612 F.2d 754, 763 (3rd Cir. 1979); Bowring v. Godwin, 551 F.2d 44, 47-48 (4th Cir. 1977).

These cases would establish the standard found by Estelle v. Gamble, 429 U.S. 97, (1976). Estelle involved the provision of medical care rather than psychiatric care, however, these appellate court found the constitutional issue the same, holding that there was no dichotomy between mental illnesses and physical illnesses. In Estelle, the Court held that "deliberate indifference to serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain' proscribed by the Eighth Amendment." id. at 104, (citation omitted).

Courts have never distinguished the type of mental illness based upon the type of treatment they received. Fact is Meriwether v. Faulkner, 821 F.2d 408, 413 (7th Cir. 1987) speaks inapposite to this conclusion that the Constitution protects

different mental illnesses differently holding "[t]here is no reason to treat transsexualism differently than any other psychiatric disorder."

Similarly, Petitioner presents the same question to the this court. Is there any reason to treat his state created mental disease that has its roots in professional psychology any differently than an other mental disease protected by the Eighth Amendment, and protected by other Circuit Courts. Any other conclusion would allow the government to pick and choose what serious illness it should treat. It simply would say it was not well established that cancer, aids, hepatitis, diabetes or any number of illness not specifically addressed by the case law as not being well established, therefore, granting qualified immunity as it did in this case.

However, "a general constitutional rule already identified in the decisional law may apply with obvious clarity to the specific conduct in question." Hope v. Pelzer 536 U.S. 730, 741 (2002). Thus the deliberate indifference standard should have applied to this case and to Welsh's mental disease.

Also at issue was did the Petitioner show harm for the denial of the mental health care. Under the plead facts it was established that if Petitioner could show his behavioral abnormality had changed through the treatment to the extent that he was no longer predisposed to commit sexual violent acts he established "the most elemental interest- the interest of being free from physical detention by one's own government." Hamdi v. Rumsfeld, 542 U.S. 507, 529 (2004).

It is well established that the "loss of liberty produced by an involuntary commitment is more than a loss of freedom from confinement." Vitek v. Jones 445 U.S. 480, 492 (1980);Parham v J. R., 442 US 584, 600, (1979) (noting the "substantial liberty interest in not being confined unnecessarily"); Addington v. Texas, 441 U.S. 418, 425 (1979) ("This Court repeatedly has recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection.)

Likewise in the Sexual Violent Predator class it is substantial that the petitioner is "afforded the same status as others who have been civilly committed; recommended treatment if such is possible; and permitted immediate release upon a showing that the individual is no longer dangerous or mentally impaired," Hendricks supra 521 U.S. at 368 – 369. Further, "[m]ere public intolerance or animosity cannot constitutionally justify the deprivation of a person's physical liberty." O'Connor v. Donaldson, 422 U.S. 563, 675 (1975).

Historically the right to treatment is also well establish in this context. Welsh's desire to no-longer have a behavioral abnormality is central to his personal security of health, which due to his incarceration he is unable to conduct his own treatment. According to our ancient law this is to be considered "the right of personal security" being "a person's legal and uninterrupted enjoyment of his life, his limbs, his body, [and] his health." This as an absolute rights of the

individuals "preservation of a man health from such practices as may prejudice or annoy it," is central to the right." William Blackstone, 1 Commentaries *129, 134.

Several thousands people are injured around the country every year for the failure to provide the necessary mental health treatment for their behavioral abnormality that predisposes them for acts of sexual violence. It is not known when the behavioral abnormality occurs either congenital or acquired the condition affects not only the lives of victims but that of those who suffer under the condition. The State of Texas like many other states deny the medical care that is needed for these individuals until their release. This is a violation of that individuals personal security and it was known in Welsh's case he had the disease when he came to the Texas Department of Criminal Justice having been diagnosed and civilly committed before his arrival.

However, instead he was denied or delayed the treatment that the State of Texas as stated he need for long term care until he was no longer predisposed to commit such despicable acts of sexual violence. See Texas Health and Safety Code 841.001.

This happens everyday to people in state prisons who recognize this form of mental disease. If it is denied for invidious reasons such as to maintain confinement of the sexual offender or for some other prophylactic measure, as it

stands now it works a malevolent injustice upon those inflicted with the disease. Therefore, Petitioner prays this court would correct the injustice.

Issue two: If a person is acquitted of false criminal charges and the highest court in state has declined review what is a reasonable time for release from the prison?

On July 3, 2019 the Texas Court of Criminal Appeals declined to review the acquittal issued by the Seventh Court of appeals in Amarillo Texas on February 26, 2019. The prison in the State of Texas the Texas Department of criminal Justice (TDCJ) has a policy that it will not release an individual except by mandated order by he Texas Court of Criminal Appeals or an Appeals Court.

The Seventh Court of Appeals issued its mandate on August 2, 2019. Welsh was not released until August 6, 2019. Welsh brought his claims pursuant to the United States Constitutional Fourth and Fourteenth Amendments.

Within the present question presented to this court is what is a reasonable amount of time to wait to release an individual from a criminal sentence when there is nothing left to be determined except stamping the release papers. The question seems to be split between the lower courts, with some claiming the

reasonableness threshold should be determined by a jury. Even this Court's precedents would determine hold contrary to the Fifth Circuits opinion in this case.

This Court in the Fourth Amendment context would determine that "delay for delay's sake" is unconstitutional. See City of Riverside v. McLaughlin 500 U.S. 44, 56. There the Court held that to hold over a period of 48 hours without a probable cause hearing it was up to "the government to demonstrate the existence of a bona fide emergency or other extraordinary circumstances" for the need of the policy that wait to release when there is nothing left to be decided. id at 57.

United States Court of Appeals have determined that whether a particular length of detention is reasonable "is a question best left open for juries to answer based on the facts presented in each case." Chortek v. City of Milwaukee, 356 F.3d 740, 747 (7th Cir. 2004) (quotation marks and citation omitted); Berry v. Baca, 379 F.3d 764, 769 (9th Cir. 2004).

The Fourteenth Amendment guarantees "more than fair process"; it "cover[s] a substantive sphere as well, barring certain government actions regardless of the fairness of the procedures used to implement them." Cnty. of Sacramento v. Lewis, 523 U.S. 833, 840, (1998) (internal quotation marks and citations omitted). "Substantive due process rights safeguard persons against the government's exercise of power without any reasonable justification in the service

of a legitimate governmental objective." Southerland v. City of New York, 680 F.3d 127, 151 (2d Cir. 2012) (internal quotation marks and citation omitted).

Because "[f]reedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action[,] . . . commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." Foucha v. Louisiana, 504 U.S. 71, 80, 112 S. Ct. 1780, 118 L. Ed. 2d 437 (1992) (internal quotation marks and citations omitted)

In Sample v. Diecks 885 F.2d 1099, 1108 (3rd Cir. 1989) the Federal Court established that "imprisonment beyond one's term constitutes punishment within the meaning of the eighth amendment." See also Calhoun v. N.Y. State Div. of Parole Officers, 999 F.2d 647, 654 (2d Cir. 1993); Davis v. Hall, 375 F.3d 703, 712 (8th Cir. 2004) (noting that individuals have a "protected liberty interest in being free from wrongful, prolonged incarceration")

Other Federal courts generally recognize a prisoner's confinement beyond the termination of his sentence as violate of this constitutional right where the continued incarceration lacks penological justification and is the product of deliberate indifference. See Campbell v. Peters, 256 F.3d 695, 700 (7th Cir. 2001); Haygood v. Younger, 769 F.2d 1350, 1354-55 (9th Cir. 1985).

Federal Courts have different interpretations about what constitutes a Fourth Amendment violation concerning the length of time. See Berry v. Baca 379 F.3d

764, 770 (9th Cir. 2004)(" Determined that three plaintiffs held far 5 hours and 17 minutes, 17 hours, and 26 hours and 32 minutes are questions of fact for the jury.) Brown v. Sudduth 675 F.3d 472, 476 – 477 (5th Cir. 2012); Young v. City of Littlerock 249 F.3d 730, 733, 736 (8th Cir. 2001) (Finding detention in jail for 30 minutes after release a fact question for the jury.); Lewis v. O' Grady 853 F.2d 1366, 1370 (7th Cir. 1988)(held "It is for a jury to determine whether the 11 hours it took the Sheriff to discharge Lewis was reasonable); Portis v. City of Chicago, 613 F.3d 702, 704 (7th Cir. 2010) (held "detentions as brief as four hours could be excessive and must be justified." Portis v. City of Chicago, 613 F.3d 702, 704 (7th Cir. 2010).

This case presents this Court with an opportunity to determine the reasonableness for prolonged incarceration in a prison after the prisoner has been fully acquitted.

XII. Prayer

For the foregoing reasons, petitioner, Lonnie Kade Welsh, respectfully requests that this Court issue a writ of certiorari to review the judgment of the Fifth Circuit.

Respectively Submitted, _____

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