Cause No. 22-6496

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

MOTION TO RECONSIDER FINDING UNDER MARTIN V. DISTRICT OF COLUMBIA COURT OF APPEALS, 506 U.S. 1 (1992)

TO THE HONORABLE JUSTICES OF THE UNITED STATES SUPREME COURT:

Come now, petitioner Lonnie Kade Welsh, humbly moves the court for reconsideration from preventing him from filing a future writ of certiorari without paying cost under Rule 38(a) in non-criminal matters citing Martin v. District Of Columbia Court Of Appeals, 506 U.S. 1 (1992).

However, for good cause Petitioner shows the following for reconsideration:

1. Welsh's filings are distinct from Martin v. District Of Columbia Court Of Appeals, 506 U.S. 1 (1992).

Welsh has filed over a period of over 3 years 7 cases in this court. However, 4 cases were criminal appeal from the denial of the writ of habeas corpus. Welsh v. State of Texas No. 20-5165, No. 20-5163, No. 20-5164, and Welsh v. Lumpkin 22-5642. Theses cases challenged by writ of habeas corpus 3 felony conviction from the State of Texas. The Welsh v. State of Texas was a direct appeal on a denial from the Texas Court of Criminal Appels state writ of habeas corpus. and the Welsh v. Lumpkin case challenged the denial of the writs in federal court under 28 U.S.C. 2254.

Theses cases involved a claim of actual innocence due to new evidence of a scientific nature that was not available at the time of the criminal proceedings. Furthermore, Welsh challenge the denial of COA in the im the Welsh v. Lumpkin case as the denial was based upon Welsh no longer being in custody of his criminal sentence.

However, Welsh's duty to register as a sex offender in the State of Texas is a direct consequence of his conviction. Another court of competent jurisdiction has ruled that the duty registration as a sex offender as a direct consequence of his criminal conviction satisfied the in custody requirement of 28 U.S.C. 2254. See Piasecki v. Court of Common Pleas, Bucks County, PA 917 F.3d 167 (3rd Cir. 2019).

Therefore, the case could not have been determined frivolous for the denial of Certificate of Appealability. These case representing criminal matters should not have been considered strikes by this court to preclude the petitioner from filing IFP.

1. THE WRITS OF CERTIORARI PRESENTED NON-FRIVOLOUS ISSUES

Welsh did file three non-criminal civil suits. The Case of Lonnie Kade Welsh, Petitioner v. Correct Care Recovery Solutions, et al. No. 21-5471 , Welsh v. Marsha McLane Cause no. 22-5631, and Welsh v. Bryan Collier22-6496 ,. This cases as explained below were non-frivolous issues that presented to this court conflicts within the circuit courts cases.

The case of Martin v. District Of Columbia Court Of Appeals, 506 U.S. 1, 2 (1992) determined that Martin having filed "repeatedly made totally frivolous demands on the Court's limited resources."

Though Welsh was denied in forma pauperis status which could be determined frivolous under Rule 39.8 the claims are not frivolous. Under Neitzke v Williams, 490 US 319, 325 (1989), this court defined frivolous as "There, we stated that an appeal on a matter of law is frivolous where '[none] of the legal points [are] arguable on their merits.' By logical extension, a complaint, containing as it does both factual allegations and legal conclusions, is frivolous where it lacks an arguable basis either in law or in fact. As the Courts of Appeals have recognized, § 1915(d)'s term 'frivolous,' when applied to a complaint, embraces not only the inarguable legal conclusion, but also the fanciful factual allegation." ." Anders v California, 386 US 738, 744 (1967).

Therefore, taking these standard as a guide we can look at the case of Welsh v. Correct care Recovery Solutions No. 21-5471. The Court determined that the case is frivolous denying IFP. However, here we have circuit splits as to the standard that governs the group of civilly committed sex offenders which would be a requirement listed under Supreme Court Rule 10.

The Fifth Circuit decided this case under the Sandin v. Connor 515 U.S. 472 atypical and significant hardship standard. This is followed in Deavers v. Santiiago 243 F. App'x 719, 721 (CA3 2007) and Senty-Haugen v. Goodno 462 F.3d 876 (COA8 2006).

The Third Circuit used a combitation between Sandin v. Connor 515 U.S. 472 and Bell v. Wolfish 441 U.S. 520.

Four other circuits would determine that the Youngberg v. Romeo standard of professional clinical judgment was the appropriate standard. See Cameron v. Tomes 990 F.2d 14, 19 (COA1 1993); West v. Schwebke 333 F.3d 745, 749 (COA7 2003); Hydrick v. Hunter 500 F.3d 978, 997 (COA9 2007); Bilal v. Geo Care L.L.C. 981 F.3d 903, 912 (COA11 2020).

The Eighth Circuit has recently changed from the Sandin v. Connor 515 U.S. 472 to the Bell v. Wolfish 441 U.S. 520 in Karsjens v. Lourey, 988 F.3d 1047 (8th Cir. 2021). There they joined other circuits following the Bell standard in Matherly v. Andrews, 859 F.3d 264, 274-76 (4th Cir. 2017); Healey v. Spencer, 765 F.3d 65, 78-79 (1st Cir. 2014); Allison v. Snyder, 332 F.3d 1076, 1079 (7th Cir. 2003).

However, a close look at these two cases shows that); Healey v. Spencer, 765 F.3d 65, 78-79 (1st Cir. 2014) does follow Youngberg and Allison v. Snyder supra based their holding that "one must keep in mind that they are pretrial detainees as well as civil committees: criminal charges against them are pending. If pretrial detainees may be subjected to the ordinary conditions of confinement, as Wolfish holds, then so may persons detained before trial as sexually dangerous persons." Id at 1179. This being factual distinct from those civilly committed under the Kansas v. Hendricks 512 U.S. 346 (1997) framework.

The Second case Welsh filed Welsh v. McLane Cause No. 22-5631, presented a novel issue for the court that this court should have taken the opportunity to decide. The question does an individual have a right to seek asylum in another State for the purpose of medical evaluation. The Fifth Circuit said no holding that sense a civil commitment judgment determined that he was a sexually violent predator he could not seek a second opinion from another state where he could live free.

Thus, there was a question on which United States Supreme Court precedent Controlled either Jones v. Helms, 452 U.S. 412 (1983) or Saenz v. Roe, 526 U.S. 489 (1999) and Memorial Hospital v. Maricopa County 415 U.S. 250 (1973). Just because this court declined to answer the question does not make the question frivolous.

Finally, in this case Welsh v. Collier cause no. 22-6496 also presents a question of not only circuit splits on issues of treatment of those civilly committed as a sexually violent predator but also the question does a state defined mental illness deserve the same protection as a medically defined mental illness.

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).

Does Estelle v. Gamble, 429 U.S. 97, (1976) 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), apply to the state defined mental illness.

Additional in Welsh v. Collier cause no. 22-6496 presented a question of when it was a reasonable time to release an individual form prison confinement after an acquittal. Again this presented a circuit split. CFSample v. Diecks 885 F.2d 1099, 1108 (3rd Cir. 1989;) 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)

Campbell v. Peters, 256 F.3d 695, 700 (7th Cir. 2001); Haygood v. Younger, 769 F.2d 1350, 1354-55 (9th Cir. 1985) to the Fifth circuit holding in this case.

Conclusion

The cases filed in this court are not frivolous and this court should reconsider its finding that bars Welsh from future filings as the case comport with the United States Supreme Court Rule 10.

Respectfully Submitted, 

Lonnie Kade Welsh
2600 South Sunset Ave.
Littlefield, Tx 79339