APPENDIX

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PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-6338

GERALD WAYNE TIMMS,

Petitioner – Appellant,

v.

U. S. ATTORNEY GENERAL,

Respondent – Appellee.

ERICA JOAN HASHIMOTO,

Court-Assigned Amicus Counsel.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Terrence W. Boyle, District Judge. (5:21−hc−02145−BO)

Argued: October 24, 2023 Decided: February 14, 2024

Before THACKER and QUATTLEBAUM, Circuit Judges, and KEENAN, Senior Circuit Judge.

Affirmed as modified by published opinion. Judge Quattlebaum wrote the opinion in which Judge Thacker and Judge Keenan joined.

ARGUED: Erica Joan Hashimoto, GEORGETOWN UNIVERSITY LAW CENTER, Washington, D.C., for Court-Appointed Amicus Counsel. Katharine Paige O'Hale,

OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee. **ON BRIEF:** Tara S. Mahesh, Student Counsel, Edward McAuliffe, Student Counsel, Audrey Hope Sheils, Student Counsel, Appellate Litigation Program, GEORGETOWN UNIVERSITY LAW CENTER, Washington, D.C., for Court-Appointed Amicus Counsel. Michael F. Easley, Jr., United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee.

QUATTLEBAUM, Circuit Judge:

After completing his sentence for a child pornography conviction, Gerald Wayne Timms was civilly committed as a sexually dangerous person under the statutory provisions enacted as part of the Adam Walsh Child Protection and Safety Act of 2006, 18 U.S.C. §§ 4247–48. While civilly committed, Timms was convicted of and sentenced for two separate federal crimes and served prison terms for those sentences. His civil commitment continued following those criminal sentences. Timms argues it should not have. So, he petitioned for habeas relief under 28 U.S.C. § 2241, claiming that his civil commitment terminated when his first criminal sentence began, that certain conditions of his criminal confinement violate the requirements of the Act and that applying the Act to him violated his constitutional rights. The district court dismissed his petition for failure to exhaust, reasoning that Timms should have raised these issues in his civil commitment proceedings. Timms appeals that order.

Timms' appeal requires us to decide what happens if a person civilly committed under the Act as a sexually dangerous person commits a criminal offense and is sentenced to a prison term.[1] Does such a criminal conviction and resulting imprisonment terminate the civil commitment? At the conclusion of the criminal sentence, must the person be released unless the government recertifies him as sexually dangerous and obtains a new order of civil commitment? In short, the answer to both questions is no. Under the Act, a

[1] We have appellate jurisdiction under 28 U.S.C. § 1291 over the final judgment of the district court denying Timms' petition. We review the denial of a § 2241 petition de novo. *Yi v. Fed. Bureau of Prisons*, 412 F.3d 526, 530 (4th Cir. 2005).

person ordered to be civilly detained after a finding of sexual dangerousness remains committed until a court finds that he is no longer sexually dangerous.[2] Otherwise, the person's civil commitment continues. The intervening criminal sentence has no impact on it. Exhaustion aside, Timms fails to state a claim for relief. So, we affirm the district court's dismissal of Timms' petition.

I.

The Adam Walsh Act authorizes the civil commitment of a person who is "in the custody of the Bureau of Prisons, or who has been committed to the custody of the Attorney General" and who has been certified as a "sexually dangerous person." 18 U.S.C. § 4248(a). The Attorney General, his designee or the Director of the Bureau of Prisons initiates the civil commitment process by certifying to the district court that an individual "is a sexually dangerous person." *Id.* The certification stays the inmate's release from federal custody pending a court-ordered hearing on whether the government can establish that the person is sexually dangerous. *Id.*

The Act defines a "sexually dangerous person" as "a person who has engaged or attempted to engage in sexually violent conduct or child molestation and who is sexually dangerous to others." *Id.* § 4247(a)(5). A person is "sexually dangerous to others" if "the person suffers from a serious mental illness, abnormality, or disorder as a result of which

[2] A state can assume civil commitment responsibility for a sexually dangerous person. *See* 18 U.S.C. § 4248(d), (g). But no state has assumed such responsibility for Timms. So, those statutory provisions are not relevant to this appeal.

he would have serious difficulty in refraining from sexually violent conduct or child molestation if released." *Id.* § 4247(a)(6). "If, after the hearing, the court finds by clear and convincing evidence that the person is a sexually dangerous person, the court shall commit the person to the custody of the Attorney General," unless a state assumes responsibility. *Id.* § 4248(d); *Matherly v. Andrews*, 817 F.3d 115, 117 (4th Cir. 2016).

If a state does not take responsibility for the sexually dangerous person, however, the Attorney General must place the person in a "suitable facility." 18 U.S.C. § 4248(d). A "suitable facility" means "a facility that is suitable to provide care or treatment given the nature of the offense and the characteristics of the defendant." *Id.* § 4247(a)(2); *see also id.* § 4247(i)(C).[3]

Once a person has been civilly committed, the relevant statutory provisions provide two ways to terminate that commitment. One, under § 4248(e), when the director of the facility where the person is placed determines that the "person's condition is such that he is no longer sexually dangerous to others, or will not be sexually dangerous to others if released under a prescribed regimen" of care or treatment for his condition, the director

[3] The Act contains other requirements. "As long as the Attorney General holds the person pursuant to a § 4248 commitment order, the Act requires the director of the facility to which the person is committed to prepare annual reports on the mental condition of the person and whether the need for the person's continued commitment persists." *United States v. Comstock*, 627 F.3d 513, 516 (4th Cir. 2010). Those reports must be sent to the district court that ordered the commitment. 18 U.S.C. § 4247(e)(1)(B). The director of the facility also must notify the civil detainee of any available rehabilitation programs. *Id.* § 4247(e)(2).

"shall promptly file a certificate to that effect" with the district court that ordered the commitment. *Id.* § 4248(e). The court then "shall order the discharge" or, on the government's motion or the court's own motion, hold a hearing to determine whether discharge is appropriate. *Id.* "If the court finds by a 'preponderance of the evidence' that a committed person is no longer sexually dangerous to others if released unconditionally or if released under a prescribed regimen of treatment, then the court must order the appropriate discharge." *United States v. Comstock*, 627 F.3d 513, 516 (4th Cir. 2010) (quoting 18 U.S.C. § 4248(e)).

Two, under § 4247(h), a civilly committed person—through counsel or a legal guardian—may petition the court every 180 days for a hearing to determine whether the person should be discharged. *See* 18 U.S.C. § 4247(h); *United States v. Searcy*, 880 F.3d 116, 120 (4th Cir. 2018).[4]

II.

Timms insists that his intervening criminal conviction and imprisonment terminated his civil commitment.[5] But under the Act, Timms' civil commitment can be terminated

[4] And, as recognized by the Act, a civilly committed person may file a writ of habeas corpus under § 2241, as Timms has done here, to challenge the illegality of his detention. *See* 18 U.S.C. § 4247(g) (nothing contained in the statutory provisions precludes seeking habeas relief).

[5] The procedural history of Timms' civil commitment, criminal convictions and various habeas petitions is lengthy and complex. *See generally Timms v. Johns*, 627 F.3d 525, 527, 533 (4th Cir. 2010); *United States v. Timms*, 684 F. App'x 341, 342 (4th Cir. 2017) (per curiam); *Timms v. Sullivan*, 824 F. App'x 184 (4th Cir. 2020) (per curiam);

only if a court—after his facility director files a certificate under § 4248 or he files a petition under § 4247—finds that he is no longer sexually dangerous. That has not happened.

In fact, twice Timms has tried unsuccessfully to convince a court to discharge him. In 2016, Timms moved for a review hearing under § 4247(h), arguing he should be released because he was no longer sexually dangerous. In response, the court conducted a § 4247(h) review hearing but concluded that Timms failed to demonstrate that he was no longer a sexually dangerous person. Then, in 2023, the district court—in response to Timms' motion for a second review hearing—again denied Timms' request for release. In reaching this result, it explained that Timms "has not participated in sex offender treatment" and continues to suffer from "serious mental illness [and] will have difficulty refraining from child molestation or sexually violent conduct if released."[6] S.A. 20.

Thus, Timms has not been able to satisfy his burden to show, by a preponderance of the evidence, that he is no longer sexually dangerous. *See United States v. Vandivere,*

United States v. Timms, 844 F. App'x 658, 659 (4th Cir. 2021) (per curiam). While that background contextualizes our decision today, it does not affect our reasoning. We do, however, highlight a few points. Timms was committed under the Act in October 2012 after the district court found that he suffered from a serious disorder that would make it difficult for him to refrain from sexually violent conduct or child molestation if released. He moved for judicial review pursuant to § 4247(h) to determine whether he should be discharged from civil commitment. But before a hearing could be held, Timms was found guilty of possessing contraband in May 2016. He was sentenced to 30 months' incarceration and supervised release. Then, in June 2020, Timms was convicted for possessing a weapon and was again sentenced to 30 months and supervised release. He filed the instant habeas petition on July 14, 2021.

[6] Timms appealed the district court's recent order denying his motion for discharge but later voluntarily dismissed the appeal through counsel, indicating that he preferred to pursue alternative relief in the district court.

88 F.4th 481, 489 (4th Cir. 2023). So, he properly remains civilly committed. If Congress wants to amend the Act to provide that an intervening criminal sentence terminates a civil commitment, it of course can do that. But unless and until it does, we follow the Act rather than judicially amend it. *See United States v. Abdelshafi*, 592 F.3d 602, 607 (4th Cir. 2010) (explaining that in interpreting statutes, we strive to implement congressional intent by examining the plain language of the statute, and absent ambiguity or clearly expressed intent to the contrary, we are to give the statute its plain meaning).

What's more, imagine if Timms were right. A civilly committed person could unilaterally end his commitment outside the specific statutory bounds by committing a crime during the commitment period. Not only would that be counter-textual; it would be absurd. And when possible, we construe statutes to avoid absurd results. *United States v. Rendelman*, 641 F.3d 36, 45 (4th Cir. 2011).

Undeterred, Timms makes a slightly different argument on appeal. Even if the criminal convictions and sentences did not terminate his civil commitment, Timms argues that the Attorney General failed to meet his statutory obligation to detain him in a suitable facility. That is, Timms insists that his civil commitment necessarily ended when he was moved from a suitable civil commitment facility to criminal incarceration in what he claims was an unsuitable facility.

But this argument also fails. Under the Act, the Attorney General "shall, before placing a person in a facility . . . , consider the suitability of the facility's rehabilitation programs in meeting the needs of the person." 18 U.S.C. § 4247(i)(C). And the Act defines a suitable facility as one "that is suitable to provide care or treatment given the nature of

the offense and the characteristics of the defendant." *Id.* § 4247(a)(2). Timms' "characteristics" necessarily include the criminal offenses he carried out while civilly committed. Timms points to nothing in the record showing that the facility was unsuitable in light of those criminal offenses.[7]

In sum, Timms properly remains in civil commitment. That status was not severed by his criminal convictions or sentences nor was the Attorney General required to seek recommitment following those sentences. Timms has not satisfied the statutory requirements for discharge. For those reasons, Timms fails to state a claim for relief under 28 U.S.C. § 2241. The district court correctly dismissed Timms' petition.[8]

[7] While not a basis for our decision, despite his current suitability challenge, Timms did not challenge the suitability of the facility in which he served his criminal sentences following his 2016 and 2020 convictions, nor did he allege he could not receive desired treatment options and appropriate conditions there. Likewise, before and after his criminal incarceration, Timms has not engaged in any of the programming available to him.

[8] Timms also challenges his confinement conditions. He claims "detainees are treated differently than not only state civil detainees, but those who refuse to participate in treatment are housed in a separate unit, refused portions of privileges allowed to persons participating in treatment, forced to wear uniforms, where treatment participants are not, are forced to be separated from other persons who participate and essentially punished for refusing sex offender treatment." J.A. 17. He also complains about having been placed in quarantine and having been refused "commissary privileges afforded to persons serving a sentence in general population." J.A. 18. The Supreme Court has not yet decided whether detainees can challenge their confinement conditions via a habeas petition. *See Ziglar v. Abbasi*, 582 U.S. 120, 144–45 (2017) ("[W]e have left open the question whether [detainees] might be able to challenge their confinement conditions via a petition for a writ of habeas corpus."); *see also Preiser v. Rodriguez*, 411 U.S. 475, 499 (1973) ("When a prisoner is put under additional and unconstitutional restraints during his lawful custody, it is arguable that habeas corpus will lie to remove the restraints making the custody illegal."). In several unpublished decisions, we have held that claims challenging conditions of confinement cannot be brought in habeas petitions. *See, e.g.*, *Wilborn v. Mansukhani*, 795 F. App'x 157, 164 (4th Cir. 2019) (per curiam) (finding "[t]his case

III.

Accordingly, we affirm the district court in dismissing Timms' petition for habeas relief on the grounds that Timms' claims are without merit and fail to state a claim for relief.[9]

AFFIRMED AS MODIFIED

presents no basis to deviate from our previous holdings" and concluding that inmate's claim to have the BOP reconsider where he was housed is not one that would fall within the scope of habeas); *see also Rodriguez v. Ratledge*, 715 F. App'x 261, 266 (4th Cir. 2017) (per curiam) (holding that an inmate's challenge to his transfer to a maximum-security facility was "not a cognizable § 2241 claim, because th[e] petition challenge[d] the conditions of his confinement, not its fact or duration"). But even assuming, without deciding, that habeas is an appropriate mechanism for Timms to challenge his conditions of confinement, Timms has not alleged facts that the conditions of confinement were imposed with an express intent to punish, as opposed to necessary functions incident to the legitimate nonpunitive government objective of confining individuals who are sexually dangerous. As a result, he has failed to allege facts that his confinement was unconstitutional. *See Matherly v. Andrews*, 859 F.3d 264, 275 (4th Cir. 2017) (holding that to establish that a particular condition or restriction of confinement is unconstitutional, a civil detainee must show that the condition or restriction was imposed with an express intent to punish or was not reasonably related to a legitimate nonpunitive government objective).

[9] We affirm the dismissal without reaching the district court's ruling on exhaustion, as we are not limited to evaluating the grounds offered by the district court to support its decision and may affirm on any grounds apparent from the record. *Suter v. United States*, 441 F.3d 306, 310 (4th Cir. 2006); *see also Dragenice v. Ridge*, 389 F.3d 92, 98 (4th Cir. 2004) (recognizing that the exhaustion rule requiring dismissal is not jurisdictional).

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION
No. 5:21-HC-2145-BO

GERALD WAYNE TIMMS,	)	
	)	
Petitioner,	)	
	)	
v.	)	**ORDER**
	)	
U.S. ATTORNEY GENERAL,	)	
	)	
Respondent.	)	

On July 14, 2021, petitioner, a civilly committed person proceeding *pro se*, petitioned for a writ of habeas corpus under 28 U.S.C. § 2241 [D.E. 1]. The matter is before the court for an initial review under 28 U.S.C. § 2243. The matter is also before the court on petitioner's motions to amend the petition [D.E. 3] and for an "emergency/expedited review hearing" [D.E. 5].

BACKGROUND

Petitioner is civilly committed to the custody of the Attorney General pursuant to 18 U.S.C. § 4248(d). See United States v. Timms, No. 5:08-HC-2156-BO, [D.E. 134] (E.D.N.C. Oct. 18, 2012). On May 27, 2015, while he was civilly committed, petitioner was indicted for possession of contraband in prison (weapon), in violation of 18 U.S.C. § 1791. See United States v. Timms, No. 5:15-CR-00169-BO, [D.E. 1] (E.D.N.C. May 27, 2015). On May 11, 2016, following a bench trial, the court found petitioner guilty of the charge in the indictment. See Timms, No. 5:15-CR-00169-BO, [D.E. 80]. On August 9, 2016, the court sentenced petitioner to 30 months' imprisonment. See Timms, No. 5:15-CR-00169-BO, [D.E. 90]. On April 24, 2017, the United

States Court of Appeals for the Fourth Circuit affirmed petitioner's conviction and sentence. See United States v. Timms, 685 F. App'x 285 (4th Cir. 2017) (per curiam) (unpublished).

On August 15 and October 26, 2017, petitioner filed motions in his civil commitment proceedings requesting clarification as to whether his civil commitment under § 4248 ran with his criminal sentence. See Timms, No. 5:08-HC-2156-BO, [D.E. 230, 235]. Petitioner argued that his civil commitment under § 4248 ceased when he was criminally convicted and began serving an active criminal sentence, and that, upon expiration of his criminal sentence on July 31, 2017, and in the absence of a new certification filed under § 4248(a), he was no longer being lawfully held in the custody of the Federal Bureau of Prisons ("BOP"). See id. On November 17, 2017, the court denied petitioner's motions for clarification and found "no basis on which to conclude that Mr. Timms' § 4248 civil commitment terminated at or after his recent criminal conviction or that he is not today in the lawful custody of the Bureau of Prisons." Timms, No. 5:08-HC-2156-BO, [D.E. 239]. Petitioner did not appeal the court's order.

On October 17, 2019, petitioner was indicted for two counts of possession of contraband in prison (weapon), in violation of 18 U.S.C. § 1791. See United States v. Timms, No. 5:19-CR-00428-FL, [D.E. 1] (E.D.N.C. Oct. 17, 2019). On February 18, 2020, after a trial by jury, petitioner was found guilty of both counts. See Timms, No. 5:19-CR-00428-FL, [D.E. 49]. On June 10, 2020, petitioner was sentenced to 30 months' imprisonment on each count to be served concurrently. See Timms, No. 5:19-CR-00428-FL, [D.E. 74]. On March 3, 2021, the United States Court of Appeals for the Fourth Circuit affirmed petitioner's conviction and sentence. See United States v. Timms, 844 F. App'x 658 (4th Cir. 2021) (per curiam) (unpublished).

In the instant petition for a writ of habeas corpus, petitioner "challenges the statutory construction and application" of § 4248 and alleges that § 4248 is "unconstitutional on its face and

as applied." Pet. [D.E. 1] 1. Petitioner contends § 4248, and the BOP's implementation of § 4248, violates the due process, ex post facto, and equal protection clauses of the United States Constitution, as well as statutory and congressional intent for § 4248 to be civil and not punitive. See Pet. at 1–8; Am. Pet. [D.E. 3] 1–15. Petitioner contends that his commitment under § 4248 ceased when he was criminally convicted, and that, upon the expiration of his two criminal sentences, and in the absence of new certification filed under § 4248(a), the BOP illegally stayed his release. See Pet. at 3–5; Am. Pet. at 2-4. Petitioner also challenges his conditions of confinement and contends that he should not be subjected to the BOP's rules and policies because they are punitive and not designed for civil detainees. See Pet. at 2–5; Am. Pet. at 4–14. Petitioner alleges in July 2021, he was placed under quarantine in the Special Housing Unit ("SHU") and was denied regular commissary privileges. See Am. Pet. at 6–7. Petitioner seeks declaratory and injunctive relief, including a court order finding that § 4248 is unconstitutional and to be released. See Pet. at 6–7; Am. Pet. at 14–15.

DISCUSSION

The court begins with petitioner's motion to amend the petition [D.E. 3]. The court grants the motion as a matter of course. See Fed. R. Civ. P. 15(a)(1); Scinto v. Stansberry, 507 F. App'x 311, 312 (4th Cir. 2013).

The court now conducts an initial review of the petition and amendment. The court begins with petitioner's claim that his § 4248 civil commitment terminated when he was criminally convicted, and that, upon the expiration of his two criminal sentences, and in the absence of new certification filed under § 4248(a), the BOP illegally stayed his release. A habeas corpus application allows a petitioner to challenge the fact, length, or conditions of custody and seek immediate release. See, e.g., Preiser v. Rodriguez, 411 U.S. 475, 484–85 (1973). Civil committees

may file a habeas corpus petition pursuant to § 2241. See 28 U.S.C. § 2241; United States v. Tootle, 65 F.3d 381, 383 (4th Cir. 1995). However, a civil committee must exhaust all available remedies before pursuing relief under § 2241. See Timms v. Johns, 627 F.3d 525, 533 (4th Cir. 2010); Bussie v. United States, No. 5:15-HC-2149-FL, 2015 WL 12910636, at *2 (E.D.N.C. Nov. 3, 2015). Although petitioner filed similar motions in his civil commitment proceedings related to his 2016 criminal conviction, petitioner did not appeal the court's order denying his motions. See Timms, No. 5:08-HC-2156-BO. Moreover, petitioner has not filed anything in his civil commitment proceedings related to his 2020 criminal convictions. See id. Thus, the court dismisses the claim for petitioner's failure to exhaust his available remedies in his civil commitment proceedings. See Timms, 627 F.3d at 533; see also Green v. United States, No. 5:11-HC-2254-D, 2012 WL 2367390, at *1 (E.D.N.C. June 21, 2012). Alternatively, the court dismisses the claim for the same reasons set forth in his civil commitment proceedings. See Order Timms, No. 5:08-HC-2156-BO, [D.E. 239].

As for petitioner's claims challenging the facial validity of the Adam Walsh Act, the Supreme Court and the Fourth Circuit have upheld the constitutionality of the Adam Walsh Act. See United States v. Searcy, 880 F.3d 116, 124 (2018); United States v. Comstock, 560 U.S. 126, 149-50 (2010); United States v. Timms, 664 F.3d 436, 454–56 (4th Cir. 2012), cert. denied, 568 U.S. 930 (2012); Matherly v. Andrew, 817 F.3d 115, 119 (4th Cir. 2016). Thus, the court dismisses these claims.

Petitioner's remaining claims challenge his conditions of confinement. A habeas petition is not the proper remedy to challenge conditions of confinement. See, e.g., Nelson v. Campbell, 541 U.S. 637, 643 (2004); Muhammad v. Close, 540 U.S. 749, 750–51 (2004) (per curiam); Preiser v. Rodriguez, 411 U.S. 475, 494, 498–99 (1973); Ferch v. Jett, No. 14-CV-1961(SRN/TNL), 2015

WL 251766, at *4–5 (D. Minn. Jan. 20, 2015) (unpublished); Yagman v. Johns, No. 5:08-HC-2103-D, 2009 WL 6669325, at *2 (E.D.N.C. Feb. 12, 2009) (unpublished), aff'd, 328 F. App'x 280 (4th Cir. 2009) (per curiam) (unpublished). Thus, the court dismisses these claims.

Alternatively, to the extent that petitioner claims he should not be subjected to the BOP's rules and policies, placement of a civil detainee "in a prison, subject to the institution's usual rules of conduct," does not per se signify punishment. Allison v. Snyder, 332 F.3d 1076, 1079 (7th Cir. 2003). "Disciplinary measures that do not substantially worsen the conditions of confinement of a lawfully confined person are not actionable under the due process clause, . . . regardless of whether the confinement is criminal or civil." Miller v. Dobier, 634 F.3d 412, 414–15 (7th Cir. 2011) (citation omitted). "Put another way, unless the deprivation of liberty is in some way extreme, then the Constitution does not require that a prisoner be afforded any process at all prior to deprivations beyond that incident to normal prison life." Deavers v. Santiago, 243 F. App'x 719, 721 (3d Cir. 2007) (unpublished) (emphasis omitted). Petitioner does not allege that he was subjected to any extreme deprivation. Instead, petitioner argues that the BOP's rules and policies should not be applicable to civilly committed persons because they are punitive. The court has already rejected petitioner's argument for failure to state a claim. See, e.g., Timms v. Holland, No. 5:17-hc-02113-BO, [D.E. 8] (E.D.N.C. Mar. 29, 2019) (unpublished), aff'd, 776 F. App'x 809 (4th Cir. 2019) (per curiam) (unpublished). Thus, the court dismisses the claim.

CONCLUSION

In sum, the court GRANTS petitioner's motion to amend [D.E. 3], DISMISSES petitioner's application for a writ of habeas corpus under 28 U.S.C. § 2241, and DENIES AS MOOT petitioner's motion for an "emergency/expedited review hearing" [D.E. 5]. The court

DENIES a certificate of appealability. See 28 U.S.C. § 2253(c); Miller-El v. Cockrell, 537 U.S. 322, 336–38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000). The clerk shall close the case.

SO ORDERED, this 11 day of March 2022.

Terrence Boyle

TERRENCE W. BOYLE
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

CASE NO. 5:21-HC-2145-BO
(TO BE SUPPLIED)

Gerald W. Timms,)
Petitioner,) PETITION FOR WRIT
v.) OF HABEAS CORPUS
U.S. Attorney General, et. al.,) §§ 2241-2243
Respondents.)

COMES NOW, Petitioner, Gerald W. Timms (hereinafter "Petitioner") and submits this Petition For Writ of Habeas Corpus pursuant to 28 USC §§ 2241-2243 and 18 USC § 4247(g) entitled "HABEAS CORPUS UNIMPAIRED" and challenges the statutory construction and application of Title 18 USC § 4247 and § 4248 (hereinafter "the Act" or "§ 4248"). As grounds for this petition Petitioner will show as follows.

The Adam Walsh Child Protection and Safety Act also known as § 4248 is unconstitutional on it's face and as applied and violates the 5th Amendment of the US Constitution pursuant to Equal Protection and Due Process. Petitioner will prove that the Respondent, et. al., has violated Congressional intent for the Act to be civil and non punitive violating both Equal Protection and Due Process in the manner outlined as follows:

EQUAL PROTECTION

1.) Persons who are civilly detained and committed are entitled to more considerate treatment and condition of confinement than prisoners, whose conditions of confinement are designed to punish.

a.) The Act, § 4248 upon its enactment by Congress was intended to be civil and non punitive. However the rules and policies are known historically to be to govern the behavior of prisoners, whose conditions of confinement are designed for the purpose of deterrence and retribution the sole aims of criminal punishment. See Bureau of Prisons (hereinafter BOP) Program Statement 5270.09 and 5394.1. Entitled as Inmate Discipline and Certification and Civil Commitment of Sexually Dangerous Persons.

b.) § 4248 was patterned by Congress after state civil commitment statutes, but although both persons in state civil detention and 4248 are similarly situated the conditions of their confinement are lacking where state civil commitments and detentions do not utilize already in place punitive measures designed to govern the behavior of criminal defendants, where the only policy utilized to govern the behavior of civil detainees by the BOP are punitive and not designed for civil detainees.

c.) No policy has been promulgated specifically to manage the behavior of civil detainees and commitments that are not "in accordance with BOP policy", (See Program Statement 5394.1), as all conditions of confinement for civil detainees refers to all BOP Program Statements designed for the management of prisoner's behavior.

DUE PROCESS

The Act, § 4248 violates Due Process under the 5th Amendment to the U.S. Constitution in numerous ways. First § 4248, violates the Due Process Clause by the use of Inmate Disciplinary actions in order to indict Petitioner Federally for 18 USC § 1791(a)(2) and § 1791(b)(3) two (2) times for Possession of a Weapon and Contraband and has placed Petitioner in disciplinary confinement which is outlined in the BOP Program Statements as "a punitive status" (See 5270.09).

Second, § 4248(a) plainly states that in order to stay the release of a person deemed to be "sexually dangerous" the person must be certified by the BOP, a certificate delivered to the U.S. Attorney's Office for filing in the district court and a judge to order the stay. Both of Petitioner's criminal sentences were served but no certification was ordered. The BOP and the court alleged that Petitioner's civil commitment were simultaneous which violates the Due Process Clause by denying a hearing pursuant to §§ 4247 and 4248.

It is constitutionally impermissible as well as statutorily since there is an obvious reason Congress outlined two (2) separate statutes for civil and criminal procedures, so, by denying Petitioner a valid certification pursuant to 4248 (a) and detaining by stay of Petitioner's release from the BOP violates § 4248 and Due Process.

Congress also defined "prisoner" in Title 18 USC § 3626 (g)(3) and did not intend for a civil detainee to be classified or defined as a prisoner. The BOP and the court in both criminal cases utilized not the definition of Congress outlined above, but the definition as outlined in Title 28 of the Codes of Federal Regulations § 500.1, to define Petitioner as a prisoner/inmate solely for the purpose to punish Petitioner in retaliation for Petitioner's numerous judicial challenges of § 4248 as being unconstitutional both on it's face and as applied, as Petitioner is doing in this Petition. By congressional definition, a person becomes a "prisoner" only after being "accused of", not before and certainly not as a civil detainee. The Fourth Circuit Court of Appeals in Comstock held that the government has no unexhausted power to prosecute "a former federal prisoner." (See U.S. v. Comstock (4th Cir. 2009)

In Timms v. Johns, 700 F. Supp. 764 (EDNC MARCH 2010) Judge Terrence W. Boyle found the Act to be unconstitutional for the same reasons that are essentially outlined herein.

In that case Judge Boyle agreed with Petitioner that the BOP violated Petitioner's rights pursuant to Kanos v. Hendricks, and other cases, however, the Fourth Circuit reversed and ordered the habeas dismissed and did not hear the conditions aspect of the case, and the conditions of Petitioner's confinement have only gotten more punitive since Timms v. Johns without any kind of judicial oversight or intervention. The only difference between between Petitioner's criminal and civil cases and the conditions thereof is, as a criminal defendant, Petitioner can earn good time credits and has a valid release date as is defined by statute to a certain number of months, where as a civil detainee, Petitioner has no opportunity to earn good time credits and he has no set release date, but the same conditions of confinement apply to both the civil detention and the criminal incarcerations, thereby making both confinements punitive.

Petitioner, on June 28, 2021, arrived back at FCI Butner for continued civil commitment pursuant to § 4248 and will be completing his criminal sentence on July 1st, 2021. His personal property has not arrived at FCI Butner 1 to date. The above mentioned property has all of his legal documents and case law. Because Petitioner is presently on an approximate three (3) week Quarantine, he is unable to utilize the Law Library or telephone and has no means of citing exact case

laws in this Petition, but will do so, and present proper documentary evidence for discovery purposes in accordance with Fed. R. Civ. P., and is therefore going from memory in this Petition For Writ of Habeas Corpus. Petitioner respectfully requests this court to grant this petition's review and allow it to proceed.

The Act has not only never been peer reviewed by qualified and accredited psychologists from outside the BOP who are unbiased and not associated nor employed by the government. No Attorney General pursuant to §4247 has ever, to the best of Petitioner's knowledge has ever reviewed or visited this facility to determine its suitability under the provisions of §4247 or Congress nor has any report by such been made by the Attorney General.

RELIEF REQUESTED

1. That since the Honorable Terrence W. Boyle presides over Petitioners first Habeas Corpus and Petitioner's civil commitment, Judge Boyle preside over this Petition;

2. That this petition be heard promptly and that counsel be appointed to represent petitioner in this matter due to the complexity of the issues herein;

3. That a peer review of the Commitment and Treatment Program (CTP) be conducted by an impartial

psychologist, not directly or indirectly employed by the government who is accredited to conduct a peer review;

4. That § 4248 be determined to be unconstitutional on its face and as applied because of no time limitations for hearings and other violations of Due Process and Equal Protection for persons similarly situated as outlined herein;

5. And that Petitioner be immediately released by the granting of this petition for writ of habeas corpus;

6. And that the decision in Timms v. Johns, 700 F. Supp. 764 (EDNC 2010) be revisited since this case is very similar.

Respectfully Submitted,

Gerald W. Timms 57292-004
Gerald W. Timms
FCI Med. 1
P.O. Box 1000
Butner, N.C. 27509

CERTIFICATE OF SERVICE

I hereby certify that ~~a~~ true and correct copies (4) have been furnished to the Clerk's Office in Raleigh, N.C. to be filed by the Clerk this 6 day of July, 2021.

Pursuant to the penalties of perjury, 28 USC §1746 this Petition For Writ of Habeas Corpus is true and correct to the best of my knowledge and belief.

Gerald W. Timms

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