

A10-1270
Appeal No. A10-1269
State of Minnesota
Supreme Court

OFFICE OF
APPELLATE COURTS

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In re the Civil Commitment of:
Peter Gerard Lonergan,
Respondent.



Appellant's Informal Pro se Brief

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Legal Issues

- I. DOES LONERGAN RETAIN THE CONSTITUTIONAL RIGHT TO CHALLENGE THE CONSTITUTIONALITY AND LAWFULNESS OF HIS INVOLUNTARY CIVIL COMMITMENT THROUGH POST-TRIAL MOTION AFTER THE TIME FOR DIRECT APPEAL HAS EXPIRED BECAUSE HE IS A COMMITTED SEX OFFENDER?

Procedural History

January 2, 2008	Court Ordered Initial Civil Commitment of Lonergan as an SDP
Date unknown	Lonergan Appeals Order to the Court of Appeals
August 5, 2008	Court of Appeals Issues Unpublished Opinion Affirming Probate Court
October 21, 2008	Minnesota Supreme Court Denies Review
May 13, 2009	Court Orders the Indeterminate Civil Commitment of Lonergan
May 27, 2010	Notice of Motion and Motion for Relief
June 3, 2010	MSOP Actually Mails Motion
June 30, 2010	Court Claims To Receive Motion
July 7, 2010	Court Denies Motion
July 19, 2010	Notice of Appeal Filed.
August 19, 2010	Appeal Brief Filed.
December 27, 2010	Appellate Court Affirms Dakota County Order.
January 27, 2011	Petition for Discretionary Review Filed.
April 19, 2011	Supreme Court Grants Review with specific regard to jurisdiction.

Amendment to Statement of Case

Loneragan hereby amends the Statement of Case to reflect the court of appeals apparent rationale for its ruling. It claimed that “the plain statutory language excludes a patient who has been committed as an SDP from the category of persons who may petition the court.”¹ The appellate court went on to claim that rationale “applies equally to preclude a rule 60.02 motion to vacate the indeterminate-commitment order;” apparently, whether or not the commitment order may in fact, violate various provisions of the Minnesota & United States Constitutions.

The appellate court failed to read the very first three paragraphs of the Statement of Case located in the *Informal Brief* filed by Lonergan in the initial Appeal. The initial Brief states very clearly that Lonergan was adjudicating the constitutionality of the civil commitment and is not seeking a reduction of custody or provisional discharge.²

Statement of Facts

Loneragan will accede to the Statement of Facts previously filed with the court and by his appointed counsel.

Argument

- I. **DOES LONERAGAN RETAIN THE CONSTITUTIONAL RIGHT TO CHALLENGE THE CONSTITUTIONALITY AND LAWFULNESS OF HIS INVOLUNTARY CIVIL COMMITMENT THROUGH POST-TRIAL MOTION AFTER THE TIME FOR DIRECT APPEAL HAS EXPIRED BECAUSE HE IS A COMMITTED SEX OFFENDER?**

This case is actually quite simple. Can the government confine humans indefinitely if the procedures government utilizes to justify the confinement, violate the constitution? Is it discrimination to have two separate sets of rules for citizens similarly situated just because one

¹ Slip op page 6.

² Informal Appeal Brief, Statement of Case, Page 2.

class of citizen happens to be identified as: *the ever hated, never forgiven sex* offenders? That is what this case is really about; because that is exactly what the Dakota County Attorney's Office did. However, that issue is not before this Court. The issue is whether Lonergan has a right to access the court through a Rule 60.02 motion. It is Lonergan's position that this is a resounding: YES! Historically, it has always been this way. The only difference is Lonergan is a civilly committed sex offender. The question is: Do sex offenders have rights?

Historically, Rule 60.02 has been the vehicle to challenge a civil judgment. "This rule [60.02] does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Rule 4.043, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action."³

This Court has the inherent power to grant appropriate relief. "Probate court has same power to vacate an order as district court for fraud, mistake, inadvertence, surprise, or excusable neglect, or for good cause."⁴ Further, [i]f the facts found by the probate court can be established on a trial in the district court, it would constitute sufficient grounds to permit the court to vacate the order.

Lonergan respectfully submits that there are no available means to challenge a civil commitment as a post-collateral review after direct appeal has expired, including, habeas

³Minnesota Rules of Civil Procedure (2009).

⁴In re Sivert's Estate, 271 Minn. 152, 164 135 N.W.2d 205, 212 (Minn. 1965).

review,⁵ as there are for criminal defendants such as the Post Conviction Act Minnesota Statute §590.01. Yet to satisfy due process, Lonergan must be afforded a mechanism for gaining a remedy for a violation of the constitution or *righting a wrong*.

“District Court has broad statutory authority to review commitments.”⁶ At the same time, the Courts have recognized that for the ordinary citizen, commitment to a mental hospital produces “a massive curtailment of liberty.”⁷ “The loss of liberty produced by an involuntary commitment is more than a loss of freedom from confinement⁸ and among the historic liberties protected by the Due Process Clause is the right to be free, and to obtain judicial relief for unjustified intrusions on the personal security.”⁹

“[A] claim that was known but not raised may be considered if the claim is so novel that its legal basis was not reasonably available at the time of the [original adjudication].”¹⁰ Moreover, “[a]lthough commitment may be a necessary procedure, it cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved.”¹¹

The issue of jurisdiction for this exact type of case has already been ruled on by this Honorable Court. “We do not share the views expressed by the court of appeals. By its deliberate use of the phrase authorizing an appeal from any order entered under this chapter as in other civil cases, the legislature has apparently chosen to create no distinction between the procedural remedies available to all civil litigants and those authorized for individuals

⁵Caprice v. Gomez, 552 N.W.2d 753, 757 (Minn.App. 1996).

⁶Matter of Kellor, 520 N.W.2d 9, 12, (Minn.App. 1994); review denied Sept. 28, (Minn. 1994).

⁷Humphrey v. Cady, 92 S.Ct. 1048, 1052; 405 U.S. 504, 509 (1972).

⁸Vitek v. Jones, 100 S.Ct. 1254, 1263; 445 U.S. 480, 492 (1980).

⁹Ingraham v. Wright, 97 S.Ct. 1401, 1413; 430 U.S. 651, 673 (1977).

¹⁰Russell v. State, 562 N.W.2d 670, 672 (Minn. 1997).

¹¹In Re Moll, 347 N.W.2d 67, 70 (Minn.App. 1984).

participating in commitment proceedings. Minn. Stat. 253B.23, subd. 7 (1988). Accordingly, as in other civil cases, a post-decisional motion for a new trial is authorized and is consistent with our appellate courts' stress on the importance of post-trial motions to preserve issues for review.¹²”

This Court further went on to rule: “[t]hat factor, coupled with the compelling nature of these proceedings, *i.e.*, that an individual is deprived of liberty by virtue of the trial court's action, should have prompted the court of appeals, even if it concluded that the order was not appealable, to consider Jost's appeal in the interest of justice, rather than dismiss on a technical procedural ground.¹³”

Lonergan claimed commitment to MSOP must end because the MSOP violates Lonergan's civil rights under the due process clause. Just because the current judgment must be found void due to those constitutional violations does not negate the fact that Lonergan is civilly committed. Under *Jost*, probate court can correct its own errors—choosing to validate the civil commitment by committing Lonergan to a program which does not violate the constitution.¹⁴ “[W]e hold that a post-decisional motion for a new trial is authorized in commitment proceedings and that a timely appeal may be taken from the commitment order or judgment or from the denial of a motion for a new trial.”¹⁵

The Court of Appeals ruled that the language of Minn.Stat. § 253B.17, Subd. 1 (2010), prohibits SDPs: “from petitioning the committing court for discharge from his indeterminate

¹² In the Matter of: James Lloyd Jost, 449 N.W.2d 719, 721 (Minn. 1990).

¹³ Id.

¹⁴ Id.

¹⁵ Id.

commitment as an SDP, applies equally to preclude a rule 60.02 motion to vacate the indeterminate-commitment order.¹⁶

The trouble with this analysis is the court's failure to consider:

“In construing the statutes of this state, the following canons of interpretation are to govern, unless their observance would involve a construction inconsistent with the manifest intent of the legislature. When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.”¹⁷

The most profound problem with the court of appeals decision is the apparent “grant of jurisdiction” to the Special Review Board to rule on post-trial issues of a constitutional magnitude where no jurisdiction previously existed prior to *Lonergan* and still does not exist pursuant to State Statute¹⁸. The court of appeals decision is outside the *scope* of the Special Review Board authority.¹⁹ Therefore, the effect of the decision is the court of appeals enacting laws from the bench, or usurping legislative authority in violation of *Separation of Powers*.²⁰ This ruling leaves Lonergan with no redress to litigate the wrong he is suffering at the hands of the Respondent. Therefore, the ruling violates the First Amendment of the United States Constitution and Article I § 8 of the Minnesota Constitution culminating in a serious and egregious violation of the Fourteenth Amendment of the United States Constitution.

The State Legislature is currently looking into excluding humans committed as SDP & SPP from all the current civil commitment laws and rewriting those laws for onerous and draconian treatment of SDP & SPP humans. The appellate court in this case, stated specifically that Lonergan was excluded because he is committed as an SDP.

¹⁶ Appeal Slip op page 6.

¹⁷ Minn.Stat §§ 645.08 & 645.16 respectively.

¹⁸ See Minn.Stat. § § 253B.18, Subd. 4c. Special review board; 253B.185, Subd. 9. Petition for reduction in custody.

¹⁹ Id at § 253B. 18, Subd. 4C. “It shall hear and consider all petitions for a reduction in custody or to appeal a revocation of provisional discharge.”

²⁰ See Minnesota Constitution, Article III, § 1.

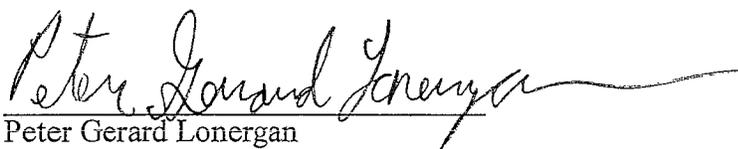
Such discrimination, based upon sexual predilections, in itself violates the constitution. It is high-time Minnesota catches up with the rest of the planet and ends the persecution of sex offenders just because it is politically popular. This case is a fine place to stop the hate and start the recovery. This Court can choose to continue the hate, which will eventually close another school in Minnesota as a result of the high cost of this irrational hate.

In closing: Lonergan again asks this Court the same three questions as he asked above. Questions being: Can the government confine humans indefinitely if the procedures government utilizes to justify the confinement, violate the constitution? Is it discrimination to have two separate sets of rules for citizens similarly situated just because one class of citizen happens to be identified as: *the ever hated, never forgiven sex offenders*? And do sex offenders have rights.

It is time to stop the hate. Lonergan is just as human as someone suffering schizophrenia or alcoholism—government doesn't enact special discriminatory laws to restrict the rights of these two classes. I would support this line of thought with legal authority, only Respondent is the only government entity in the entire United States currently practicing this type of constitutional abuse—therefore, no authorities exist.

WHEREFORE, Appellant, Peter Gerard Lonergan, request this Court reverse the order of the Court of Appeals, and remand to Dakota County for hearing and for adjudication.

Dated: June 16, 2011



Peter Gerard Lonergan
Propria Persona

The author of this document certifies that it was written using Microsoft Word. It is in size 12 point and in "*Times New Roman*" font. It contains 2290 words, 125 paragraphs and is 7 pages long.


Peter Gerard Lonergan