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STATE OF MINNESOTA
IN THE SUPREME COURT

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District Court No: 19-P5-88-001302

A10-1269
Appeals Court No: A10-1270

Case Title: In re Civil Commitment of Robert Archie Kunshier

Petitioner's pro se BRIEF

Robert A. Kunshier
1111 Highway # 73
Moose Lake, MN 55767
(pro se FOR PETITIONER)

Karen Henke
Office of Dakota County Attorneys
Dakota County Judicial Center
1560 Highway 55
Hastings, MN 55033-2392
(ATTORNEY FOR RESPONDENT)

Kurt M. Anderson
Attorney at Law
P.O. Box 2434
Minneapolis, MN 55402-0434
(ATTORNEY FOR PETITIONER)

Lori Swanson
Minnesota Attorney General
445 Minnesota Street
Suite 1800
St. Paul, MN 55101-2134
(ATTORNEY FOR RESPONDENT)

David Jaehne
Attorney at Law
60 E. Marie
Suite 109
W. St. Paul, MN 55118
(ATTORNEY FOR PETITIONER)

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Petitioner's pro se Brief

APPENDIX

- I. In re Schmitt, 1988 Minn. App. LEXIS 164 (Minn. Ct. App. Mar. 1 1988)[Un Published copy provided]
- II. Affidavit of service by mail

The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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Order filed on April 19, 2011 by the Minnesota Supreme Court, stated that the issue before the Minnesota Supreme Court is:

“May a person indeterminately civilly committed as a sexually dangerous person or as a sexually psychopathic personality petition the court for relief from judgment of commitment under Minn. R. Civ. P. 60.02.”

It was further ordered by the Minnesota Supreme Court on May 13th, 2011 that the Petitioner in this matter would be allowed to file a pro se Brief.

The issue in front of the Minnesota Supreme Court is:

- I. May a person indeterminately civilly committed as a sexually dangerous person or as a sexually psychopathic personality petition the court for relief from judgment of commitment

- II. under Minn. R. Civ. P. 60.02

I.

May a person indeterminately civilly committed as a sexually dangerous person or as a sexually psychopathic personality petition the court for relief from judgment of commitment

To answer the issue , I would like to direct the Minnesota Supreme Court to the Legislative Intent in Minnesota Statute 253B.17 subd. 1

“253B.17 RELEASE; JUDICIAL DETERMINATION Subdivision 1.

Petition. “Any patient, except one committed as a person who is mentally ill and dangerous to the public or as a sexually dangerous person or person with a sexual psychopathic personality as provided in section 253B.18, subdivision 3, or any interested person may petition the committing court or the court to which venue has been transferred for an order that the patient is not in need of continued care and treatment or for an order that an individual is no longer a person who is mentally ill, developmentally disabled, or chemically dependent, or for any other relief.....”

According to this the Minnesota Legislature intended that the civil committing courts could be petitioned to determine if a person no longer needed continued care.

1. *“Any patient.”*

a. This **would be** Petitioner.

(1). Minnesota Statute 253B.02 DEFINITIONS.

(a). Subd. 15. Patient. *“Patient means any person who is receiving treatment or committed under this chapter.”*

2. *“except one committed as a person who is mentally ill and dangerous to the public or as a sexually dangerous person or person with a sexual psychopathic personality as provided in section 253B.18, subdivision 3”.*

a. This **would not be** Petitioner. I am **not** a sexual psychopathic personality **as provided in section 253B.18, subdivision 3**. I am a sexual psychopathic personality **as provided in section 253B.185**.

b. From clear and plain language the intent of the Minnesota Legislature was **not** to include Petitioner in this definition. Instead the Minnesota Legislature set up a narrowly defined exception, and then even more narrowly defined it to only include **“as provided in section 253B.18, subdivision 3”**

c. Petitioner is clearly not civilly committed under Minnesota Statute 253B.18 subd. 3 as the following clearly indicates.

(1). Commitment proceedings under former Minn. Stat. 526.09 (now Minn. Stat. 253B.185) are not criminal in nature; confinement under that statute is for treatment, not for punishment. *In re Kunshier*, 521 N.W.2d 880, 1994 Minn. App. LEXIS 957, 107:233 Fin. & C. 12 (Minn. Ct. App. 1994).

(2). Where expert testimony upon which the district court relied was given in terms of the definition of psychopathic personality under Minn. Stat. 526.09 (now Minn. Stat. 253B.185), the sex offenders commitment was reversed; it was not enough for the district court to set forth the elements, in a conclusory fashion, as to whether the subject of the commitment suffers from habitual misconduct in sexual matters, an lack of power to control sexual impulses, and whether it is probable that the lack of control will result in harm to others. *In re Kunshier*, 521N.W.2d 880, 1994 Minn. App. LEXIS 957, 107:233 Fin. & C. 12 (MinnCt. App. 1994)

(3). Commitment of an individual under Minn. Stat. 526.09 (now Minn. Stat. 253B.185), requires clear and convincing evidence that the subject of such commitment suffers from habitual misconduct in sexual matters; an utter lack of power to control sexual impulses; and probability he lack of control will result in harm to others. *In re Kunshier*, 521 N.W.2d 880, 1994 Minn. App. LEXIS 957, 107:233 Fin. & C. 12 (Minn. Ct. App. 1994).

d. These cases above show **conclusively** that in the judgment of the Minnesota Court of Appeals the Petitioner is not civilly committed under Minnesota Statute 253B.18, but rather under Minnesota Statute 253B.185.

3. “*or any interested person*”.

a. 253B.02 DEFINITIONS.

(1). Subd. 10. Interested person.

(a). *Interested person means: (1) an adult, including but not limited to, a public official, including a local welfare agency*

*acting under section 626.5561, and the legal guardian, spouse, parent, **legal counsel**, adult child, next of kin, or other person designated by a proposed patient; or (2) a health plan company that is providing coverage for a proposed patient.*

b. I am not sure who this would be ? Because as far as I know Mr. Jaehne has **only** been appointed to represent me at the Special Review Board, 3 Judge panel or subsequent appeals. The last attorney to represent me at the civil commitment hearing was disbarred for failing to file clients paperwork and taking clients money.

(1). See *In re: Gryzbek*, 552 N.W. 2d 215 (1996).

(2). See *In Re Petition for Disciplinary action against John E. Gryzbek*, 567 N.W. 2d 259 (1997)

4. *“may petition the committing court or the court to which venue has been transferred for an order that the patient is not in need of continued care and treatment or for an order that an individual is no longer a person who is mentally ill, developmentally disabled, or chemically dependent,”.*

a. My committing court was Dakota County.

b. I was never determined to have a mental illness.

c. I have completed treatment (Satisfied Judgment).

(1). In prison before release

(2). Here at Minnesota Sex Offender Treatment (MSOP)

d. No longer in need of continued care.

(1). Was deemed safe enough to enter the community to do volunteer work by treating staff at MSOP.

5. *“or for any other relief.....”*

a. The Dakota County Court, claimed Petitioner had *“uncontested and accurate evidence.”*

b. The Minnesota Court of Appeals, claimed Petitioner had, *“substantial arguments, and substantial theory’s for relief.”*

c. The Minnesota Supreme Court denied those same claims *“for any other relief.”*

District court has broad statutory authority to review commitments under Minn. Stat. 253B.17, subd. 1. *In re Kellor*, 520 N.W.2d 9, 1994 Minn. App. LEXIS 713 (Minn. Ct. App. 1994).

II.

under Minn. R. Civ. P. 60.02

To answer the issue, I would like to direct the Minnesota Supreme Court to the Legislative Intent in Minnesota Statute 253B.23 subd. 7

253B.23 GENERAL PROVISIONS Subd. 7. Appeal. *“The commissioner or any other aggrieved party may appeal to the Court of Appeals from any order entered under this chapter as in other civil cases. Any district court order or judgment under this chapter or related case law may be appealed within 60 days after the date of filing of the order or entry of judgment. A judgment under section 253B.18, subdivision 1, may be appealed within 60 days after the date of the order entered under section 253B.18, subdivision 2.”*

Minnesota Statute 253B (also known as The Minnesota Civil Commitment and Treatment Act) has been determined to be civil in nature so as **not to offend** the Minnesota Constitution or the United States Constitution. In applying Minnesota Statute 253B.23 subd. 7, it was clearly the Legislature’s intent to have the Minnesota Rules of Civil Procedure apply to the Minnesota Statute 253B (also known as The Minnesota Civil Commitment and Treatment Act). This clear intent is shown in the phrasing of Minnesota Statute 253B.23 subd. 7 “**as in other civil cases**”.

To show that this was the Legislature’s Intent, the Minnesota Supreme Court decided the following : *In re Jost*, 449 N.W.2d 719 (Minn. 1990) (construing Minn. Stat. 253B.23, subd. 7 (1988)).

“By its deliberate use of the phrase authorizing an appeal "from any order entered under this chapter as in other civil cases," the Minnesota legislature has chosen to create no distinction between the procedural remedies available to all civil litigants and those authorized for individuals 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 the appellate courts' stress on the importance of post-trial motions to preserve issues for review. As a parallel to other civil cases, the scope of appellate review of a denial of a new trial motion differs

from that attending review of the underlying commitment decision.”

In the case of *In Re Bowers*, 456 N.W.2d 734, 1990 Minn. App. LEXIS 592 (Minn. Ct. App. 1990). The Minnesota Court of Appeals ruled:

“Minn. R. Civ. P. 60.02(4) authorizes a party to move the trial court to vacate a void judgment. Parties to commitment proceedings are permitted to bring post-trial motions. Such motions are not required in commitment proceedings to preserve issues for review. Rule 60.02(4) is available to parties. A party is one who has the right to control the proceedings, to examine and cross-examine the witnesses, and to appeal.”

Minnesota Rules of Civil Procedure, Rule 60.02

*Minnesota Rules of Civil Procedure 60.02 Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; Etc. **On motion and upon such terms as are just, the court may relieve a party or the party's legal representatives from a final judgment (other than a marriage dissolution decree), order, or proceeding and may order a new trial or grant such other relief as may be just for the following reasons:***

*(e) **The judgment has been satisfied, released, or discharged or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or***

Once Petitioner completed treatment, which is what Petitioner was committed for and was deemed safe enough to enter the community to do volunteer work by MSOP Treatment Staff. Petitioner became eligible for release , under Minnesota Rules of Civil Procedure, Rule 60.02(e) as well as under Minnesota Statute 253B.17 subd. 1.

- (1). *In re Kunshier*, 521 N.W.2d 880, 1994 Minn. App. LEXIS 957, 107:233 Fin. & C. 12 (Minn. Ct. App. 1994).
- (2). (Unpublished Opinion) *In re Schmitt*, 1988 Minn. App. LEXIS 164 (Minn. Ct. App. Mar. 1 1988). *Although a patient was*

entitled to challenge the trial courts commitment order, under Minn. Stat. 253B.23, subd. 7, when the trial courts order was supported by substantial evidence, the order was upheld.

The trial courts order is not supported by substantial evidence, rather the Dakota County Court relied on Technical Procedure Grounds.

(f) Any other reason justifying relief from the operation of the judgment.

Any other reason might be the issues that the Minnesota Court of Appeals said where substantial arguments ? Or the Minnesota Supreme Court denied hearing. There has been changes in the Minnesota Statute 253B. When this was decided to be constitutional back in *Linehan, Blodgett, and Call*. There was no clear evidence that Minnesota Statute 253B was unconstitutional. **That isn't the case today.** Petitioner can clearly show that he was committed for treatment (*In Re Kunshier* 521 N.W.2d 880, 1994 Minn. App. LEXIS 957, 107:233 Fin. & C. 12 (Minn. Ct. App. 1994) and not for punishment. So 9 years after completing the MSOP Program and being deemed safe enough to enter the community, why is the Petitioner still committed ? What has changed (*changed circumstances*) ? Since no one has been released, could this be considered "*extraordinary circumstances.*" Under the Minnesota Rules of Civil Procedure, Rule 60.02(f), as well as under Minnesota Statute 253B.17 subd. 1.?

The motion shall be made within a reasonable time, and for reasons (a), (b), and (c) not more than one year after the judgment, order, or proceeding was entered or taken. A Rule 60.02 motion does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding,

Apply to like civil matters "any order entered under this chapter as in other civil cases".

CONCLUSION:

I am not an attorney and won't attempt to sound like one, here is the way I see this. I compare it to a death row prisoner and there has been new evidence, in the form of DNA and it shows very

clearly that she/he didn't do it. It not only shows that she/he didn't do it, but also helps the police find and arrest the person who did the crime. But the death row prisoner, can't get the new evidence heard because there is no Post Conviction. This is the situation in the case of civilly committed person under Minnesota Statute 253B.185. We are waiting to be put to death because there is no way to gain our liberty back. Already about 40 people have died here.

It has been said or whispered that a Writ of Habeas Corpus might apply. Petitioner 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 review, See *Caprice v. Gomez*, 552 N.W.2d 753 (Minn. App. 1996). As stated above I am like that death row prisoner. I am here until I die. Because even if something changes I have no avenue to have it heard.

Unless that is what the Minnesota Legislature intended for Minnesota Statute 253B.17 subd. 1. Or the Minnesota Rules of Civil Procedure apply with like force to the Minnesota Civil Commitment and Treatment Act.

I would like someone to explain how this is legal ?

I complete treatment as part of my criminal conviction, and am denied release.

I am civilly committed for the same treatment. I complete that court ordered treatment, and am denied release.

I go to the Special Review Board, (twice) after completing treatment and am denied release.

I am deemed safe enough by MSOP Treatment Staff to go into the community and do volunteer work and am denied release.

I appeal that decision to the 3 Judge Panel (twice) and am denied release.

I appeal that decision to the Minnesota Court of Appeals and am denied release.

I appeal that decision to the Minnesota Supreme Court and am denied release.

I file a Writ of Habeas Corpus (twice) into Carlton County and am denied release.

I file an appeal to the Minnesota Appeals Court (twice) on the denial of my Writ of Habeas Corpus and am denied release.

I file an appeal to the Minnesota Supreme Court on the denial of my Writ of Habeas Corpus and am denied release.

I file a Motion for Relief, under the Minnesota Rules of Civil Procedure into Dakota County District Court, get “*uncontested and accurate evidence*” and am denied release.

I appeal that decision to the Minnesota Court of Appeals, get “*substantial arguments, and substantial theory’s for relief*” and am denied release.

I appeal that decision to the Minnesota Supreme Court get my issues denied and the decision hasn’t been made as of yet on the technical procedural grounds ?

Minnesota Statute 645.16 LEGISLATIVE INTENT CONTROLS

“The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature. Every law shall be construed, if possible, to give effect to all its provisions.

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.”

Thank you, I am both grateful and humbled, for the opportunity to be heard by the Minnesota Supreme Court.

Respectfully Submitted,

Robert A. Kunshier

Robert A. Kunshier

1111 Highway # 73

Moose Lake, MN 55767

(pro se FOR PETITIONER)

5-23-11

Date