

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

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



Appellant's Informal Pro se Reply Brief

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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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Argument

The Respondent claimed in its *Respondent's Brief* that Lonergan must appear before the Special Review Board¹ to gain remedy for the constitutional violation he is suffering daily at the hands of the MSOP.² It is true that Lonergan gave the court the option to release him; it is no secret he does not agree with the involuntary commitment order.³ Such option for the probate court however, does not negate the fact that Lonergan is charging serious constitutional violations.

The Court of Appeals erred because the SRB does not have the authority to cure the fraud perpetrated by the MSOP and the Dakota County Attorney's Office at the final commitment hearing. The SRB "shall hear and consider all petitions for a reduction in custody or to appeal a revocation of provisional discharge."⁴ Because the SRB does not have the authority to hear issues where a miscarriage of justice has occurred, or to cure constitutional errors which occurred at the commitment court, it would not make sense to compel Lonergan to pursue a remedy where none may occur as a matter of law.

Respondent acknowledges where constitutional violations, such as the Sixth Amendment or Fourteenth Amendment are at stake, Rule § 60.02 is an appropriate remedy.⁵ "The Special Review Board is not authorized to determine whether an SDP patient received ineffective Assistance of counsel during commitment proceedings."⁶ This is because *Lindsey* claimed deprivations of his constitutional rights at the commitment hearing. Lonergan likewise, makes

¹ Hereinafter "SRB"

² Respondents Brief (hereinafter "RB") at 29-30.

³ See *In re Commitment of Lonergan*, No. A08-0394, 2008 Minn. App. Unpub. LEXIS 904, 2008 WL 2967088 (Minn. App. Aug. 5, 2008), review denied (Minn. Oct. 21, 2008); cited by Respondent.

⁴ See Minn.Stat. § 253B.18, Subd. 4c. Special review board. (a)

⁵ See RB at 22-23.

⁶ *Id.*; also see *In re Lindsey*, A10-2123, 2011 WL 1938288, at *3-4 (MinnApp. 2011); cited by Respondent.

claims that the constitution was violated at his commitment hearing. The SRB does not have the authority to discern whether or not the fraud occurred. It cannot hear witnesses or accept *newly* discovered evidence. Therefore, Rule § 60.02 is the appropriate remedy for Lonergan's case.

An alternative remedy for the appellate court would be to *affirm in part and reverse in part*. To deny Lonergan access to remedy in the commitment court is to deny substantive due process. A miscarriage of justice has occurred. This case should be strictly construed to protect the civil rights of Lonergan and allow him to prove his case to the commitment court.

Respondent claims that it is put at a disadvantage because the Commissioner of Human Services "who operates MSOP, is not a party to the proceeding and the County Attorney is in no position to make a case for MSOP."⁷ Lonergan finds this argument unpersuasive since the same County Attorney had no trouble at all making a case for the MSOP at Lonergan's Final Commitment hearing when it was demanding he be committed there. Lonergan sees this as a stall tactic. Court should end the embarrassing sham called the MSOP and close this *dark chapter* of Minnesota history.

This Court claimed to not have a problem finding that the SDP/SPP Act violates Substantive Due Process, Ex Post Facto, and Double Jeopardy if it were ever presented that the SDP Act is being utilized to advance a sham process. "The majority correctly states that 'Linehan has not offered evidence that the treatment regime at MSH or MPPTC is a sham, or even that such treatment is ineffective.' But given the legislature's real motivation behind the SDP Act, we are concerned that such evidence will become readily available in the near future. When that occurs, we will not hesitate to find that the SDP Act, in addition to violating

⁷ RB at 39.

substantive due process, also violates ex post facto and double jeopardy. PAGE, Justice (dissenting).”⁸ Recently, the Minnesota Legislative Auditor’s Office found 103 separate potentially constitutional violations at the MSOP. Lonergan should be allowed to prove the sham.

This is the Court’s chance to put right what is definitely wrong. The Minnesota Attorney General, at the time of Linehan, was touting that the program was 32 months long. Yet more than 17 years later, not one person has been released (including Linehan), or even provisionally released from the MSOP. The way Lonergan sees it, that is **the very definition of a sham** and this Court needs to hold to its promise and declare it a sham. This case is the very first case accepted by this Minnesota Supreme Court since its promise in *Linehan*.

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: July 28, 2011


Peter Gerard Lonergan
Propria Persona

⁸ In re Linehan 557 N.W.2d 171, 201 (Minn. 1996).

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 1267 words, 53 paragraphs and is 4 pages long.


Peter Gerard Lonergan