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Your Honor

AUG 21 2020

8-19-20

SC Court of Appeals

I am writing to request additional time to bring forth more evidence in my case before the courts of appeals. As I am now Pro Se in my appellant lawyer has put in a motion to be relieved of the case. I request this time as I am

A) limited in my time to use the legal library to one or two (1-2) days a week

B) Am new to workings in the legal system.

I would like to thank you for your consideration in this matter and look forward to hearing from you in the near future

Ronald Garrard
% 4546 Broad River Road
Columbia, South Carolina
29218

Thank you

Ronald Garrard

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MEMORANDUM OF LAW

Enclosed find list to support the case of Gerald Garrard in Appeals.

- 1) Foucha was diagnosed with Anti Social personality disorder “for which there is no effective treatment” (Foucha v. La 504 U.S. 71 @77 1992)
- 2) Volition is defined as the ability to make a choice or determine something. (Volition Blacks Law Library 10th Edition)
- 3) P. 1177 The nature of predatory sexual assault requires that an offender restrain [himself/ herself] from such acts in public to avoid immediate detection. The restraint demonstrates the ability to choose when and where to engage in the offensive conduct.
- 4) A predatory sexual offenders ability to deliberate about were to commit an act is evidence that the offender can engage in practical reasoning. [Robert F. Schopp, Automatism, insanity, and Psychology in criminal responsibility @ 193 1991]
- 5) Recognizing that it had not ‘distinguished for constitutional purposes among volitional, emotional, and cognitive impairment’ the courts attempted to establish that ‘there must be proof of serious difficulty in controlling behavior’ [Crane at 4112, 414-15].
- 6) The court requires ‘proof of serious difficulty in controlling behavior (Crane @415) yet the courts are unable to objectively examine an individuals ability to control or resist his or her desires. Hence volitional impairment should not be used to satisfy the legal requirments of mental illness.
- 7) The association for the treatment of Sexual Abusers called the volitional impairment standard ‘meaningless and unworkable.[brief for Association for the treatment of Sexual Abusers as Amicus Curiae Supporting Petitioner Kansas v Crane,534 U.S. 407 (2002)
- 8) In Crane v. Arizona [548 U.S. 735 (2006)] the supreme Court itself warned about using the DSM as evidence of a mental disease, recognizing that ‘dangers arise because of the imperfect fit between the questions of ultimate concern to the law and the information contained in a clinical diagnosis. [id. @ 774]
- 9) Along with a showing of ‘mental illness’ civil commitment requires a determination that the individual is dangerous. This requires a finding that the individual will likely engage in future conduct that is dangerous to the public or the individual. [Hendricks @ 360 – 61]

- 10) Studies have shown the 3.5% of sex offenders released were reconvicted of a sex crime within three (3) years in a longitudinal study published by the Department of Justice 1.3% of rapist and 2.5% of child molesters were rearrested.
- 11) In *Barefoot v. Estelle* [463 U.S. 880 (1983)] the Supreme Court addressed the issue of where mental health experts testimony regarding a defendants future dangerousness was constitutional in the context of capitol punishment.
- 12) Under the Supreme Courts decision in *Daubert v Merrel Dow Pharmaceuticals Inc.* [509 U.S. 579 (1993)] evidence of future dangerousness must be the product reliable principals and methods to ensure scientific validity.
- 13) In *re Graham*, 837 N.W. 2^d 382, 385 (N.D.) 2013 stating that State law requires the state to prove by clear and convincing evidence that the individual is sexually dangerous. Several studies show that estimates are no more accurate than chance. [see *Barefoot @ 463, U.S. @ 918* (Blackbun, J dissenting).
- 14) Thomas W. Campbell *Assessing sex offenders problems and pitfalls* 94 – 97 (2004) citing research showing violence predictions error rates ranging from 54% to 94%.
- 15) In *Crane* the Supreme court stated that SVP commitment REQUIRES THAT AN OFFENDERS ESTIMATED FUTURE DANGEROUSNESS 'MUST BE SUFFICIENT TO DISTINGUISH THE DANGEROUS SEXUAL OFFENDER FROM THE DANGEROUS BUT TYPICAL RECIDIVIST IN A ORDINARY CRIMINAL CASE.
- 16) *Kansas v Crane* 534 U.S. 407, 413, (2002) since recidivism rates by criminals in such 'ordinary cases' is above 50% THIS WOULD REQUIRE A RECIDIVISM PREDICTION APPROACHING 100% CERTAINTY. The tools currently used to estimate dangerousness clearly do not meet these standards.
- 17) Due process provides a law is void for vagueness if it does not give fair warning and it allows for arbitrary and discriminatory application [*Grayned v. City of Rockford* 408 U.S. 104, 108 (1972)] The Supreme court has held that the void for vagueness doctrine applies to both civil and criminal actions were 'exaction of obedience to a rule or standard ... was so vague and indefinite as really to be no rule or standard at all. *A. B. Small Co v. Am. Sugar Refining Co.*, 267 U.S. 233, 239 (1925). The lack of an objective legal standard for the requisite 'mental abnormality' and the reliance on inaccurate assessments of dangerousness fails to sufficiently define what characteristics are sufficient for commitment under SVP Statues. Offenders may be arbitrarily committed based on ambiguous definitions and unreliable predictions of future risk. Because SVP laws lack sufficiently defined characteristics and measurable standards these statues are unconstitutionally vague.

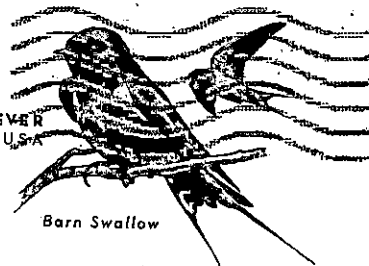
- 18) SVP statutes have alternative purposes of treatment of the offender and the protection of society. However the court has stated that treatment is not required in civil commitment because the state has a interest in protecting the public from dangerous individuals with treatable as well as untreatable conditions. [Hendricks U.S. sat 366] Applying the factors outlined in Kennedy v. Mendoza-Martinez supports the conclusion that SVP statutes are punitive.
- 19) In United States v. Melendez-Carrion the Second Circuit Court of Appeals determined that a statute permitting preventative detention constituted punishment because the detention period was not limited and could last up to one (1) year and the confinement could not be 'characterized as mild. [790 F.2d 984, 999 (2d Cir (1986)].
- 20) While the government has a substantial interest in protecting the public this interest does not make preventive detention any less punitive. 'One of the reasons society imprisons those convicted of a crime is to keep them from inflicting future harm, but that does not make imprisonment any the less punitive. [United States v. Brown 381 U.S. 437, 458 (1965)].
- 21) Sex Offender Programs cannot violate another central indicia of a Bona Fide civil commitment system: that it must not impinge on the primacy of the criminal justice system as a states tool for managing antisocial behaviors. It cannot be far from a "narrow exception" to the charge and convict paradigm a "limited subclass of dangerous persons". Sex Offender Programs cannot be intentionally shaped as tools that rival the scale of the criminal justice system. Hendricks 521 U.S. @ 357
- 22) As a less restrictive measure is available to the individual the court can order a community placement. A trial court could err by not otherwise consider this alternative placement in light of the evidence produced.

RONALD GARRARD
VELL PATH SOLUTIONS
1546 BROAD RIVER RD
COLUMBIA, SC 29210

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SOUTH CAROLINA COURT OF APPEALS
JENNY ABBOTT KITCHINGS, CLERK
POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA

29211-162929

