



(PC) Edward Ronje v. King et al

2015 | Cited 0 times | E.D. California | April 14, 2015

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

EDWARD RONJE,

Plaintiff, v. KING, et al.,

Defendants.

Case No. 1:14-cv-01589-LJO-JLT (PC) FINDINGS AND RECOMMENDATION TO DISMISS CASE AS BARRED BY HECK V. HUMPHRY, 512 U.S. 477 (1994) and FOR FAILURE TO STATE A CLAIM (Docs. 1, 8, 11) 30-DAY DEADLINE

I. Findings

A. Procedural History Plaintiff, Edward Ronje, is a civil detainee who is currently proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on October 10, 2014. (Doc. 1.) Upon review initial review, it was discovered that Plaintiff was challenging the assessment protocol which resulted in his civil detention. Thus, on December 29, 2014, an order issued giving Plaintiff thirty days to show cause ("OSC") why this action should not be dismissed as barred by Heck v. Humphrey, 512 U.S. 477, 487-88 (1994). (Doc. 8.) On March 20, 2015, Plaintiff filed his objections. (Doc. 11.) The Complaint is before the Court for screening.

B. Screening Requirement ANotwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss [a case brought under 42 U.S.C. §1983] at any time if the court determines that . . . the action or appeal . . . fails to state a claim upon which relief may be granted.@ 28 U.S.C. ' 1915(e)(2)(B)(ii).

Wilder v. Virginia Hosp. Ass'n, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983). Section 1983 is not itself a source of substantive rights, but merely provides a method for vindicating federal rights conferred elsewhere. Graham v. Connor, 490 U.S. 386, 393-94 (1989).

To state a claim under § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated and (2) that the alleged violation was



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committed by a person acting under the color of state law. See *West v. Atkins*, 487 U.S. 42, 48 (1988); *Ketchum v. Alameda Cnty.*, 811 F.2d 1243, 1245 (9th Cir. 1987).

C. Summary of the Complaint He names the following Defendants: (1) Audrey King, Executive Director of CSH, (2) Cliff Allenby, Director of California Department of State Hospitals, (3) Court of Appeal, Fifth Appellate District, Division Three, and (4) the Orange County District Attorney's Office. Plaintiff alleges that the 2009 standardized assessment protocol ("SAP"), under which he was determined to be a sexually violent predator so as to cause his detainment, was illegally enacted and violates section 6601 of the California Welfare and Institutions Code, and that he identified the error before the probable cause determination. Plaintiff asserts that the 2009 SAP was not a valid standardized assessment and that his commitment based thereon deprived him of due process and violated his rights under the First, Fourth, Fifth, Eighth, and Fourteenth Amendments of the United States Constitution. Plaintiff seeks a judgment declaring that his due process rights were violated; both preliminary and permanent injunctions prohibiting the defendants and their agents from arguing that Plaintiff is a dangerous sex offender who requires indeterminate commitment and from applying a diagnosis of pedophilia as a justification for Plaintiff's false imprisonment; and monetary damages.

As previously stated in the order to show cause and discussed in greater detail below, Plaintiff is not able to pursue claims challenging his confinement that will lead to his earlier release under section 1983. These claims are proper fodder for a petition for writ of habeas corpus. Thus this action is appropriately dismissed. A. Analysis

1. Overview of Sexually Violent Predator Act (SVPA) The SVPA, Cal. Welf. & Inst. Code §§ 6600 et seq., provides for the civil commitment of who has a diagnosed mental disorder that makes the person a danger to the health and safety of

Cal. Welf. & Inst. Code § 6600(a)(1). The SVPA codifies a process involving several administrative and judicial stages to determine whether an individual meets the requirements for civil commitment.

First, the California Department of Corrections and Rehabilitation (CDCR) and Board of Parole Hearings (BPH) screens inmates who may be sexually violent predators at least six months prior to their scheduled release dates. Cal. Welf. & Inst. Code § 6601(a)(1), (b). The screening is conducted in accordance with a structured screening instrument developed by the State Cal. Welf. & Inst. Code § 6601(b). If CDCR and BPH individual to the SDSH for a full evaluation. Id.

The SDSH employs a standardized assessment protocol to determine whether a person is a sexually violent predator under Cal. Welf. & Inst. Code § 6601(c). If two SDSH evaluators, or in some circumstances, two independent evaluators, determine that the per mental disorder so that he or she is likely to engage in acts of sexual violence without appropriate



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the applicable county. Cal. Welf. & Inst. Code § 6601(d)-(h).

filed in Superior Court. Cal. Welf. & Inst. Code § 6601(i). . People v. Superior Court (Ghilotti), 27 Cal. 4th 888, 904 (Cal. 2002). The petition is reviewed by a superior court judge to determine whether the that the individual named in the petition is likely to engage in sexually violent predatory criminal

beh Cal. Welf. & Inst. Code § 6601.5. If so found, a probable cause hearing is conducted, at which the alleged predator is entitled to the assistance of counsel. Cal. Welf. & Inst. Code §§ 6601.5, 6602(a). If, at the hearing, no probable cause is found, the petition is dismissed. Id. However, if probable cause is found, a trial is conducted. Id.

At trial, the individual is entitled to the assistance of counsel, to retain experts or other professionals to perform an examination on his or her behalf, and to access all relevant medical and psychological records and reports. Cal. Welf. & Inst. Code § 6603(a). Either party may demand a jury trial. Cal. Welf. & Inst. Code § 6603(a)-(b). The trier of fact must determine whether the person is a sexually violent predator beyond a reasonable doubt. Cal. Welf. & Inst. Code § 6604. is a sexually violent predator, the person shall be committed for an indeterminate term to the custody of [SDSH] for appropriate Id.

Once committed, sexually violent predators must be reevaluated at least annually. Cal. Welf. & Inst. Code § 6604.9(a). The annual report must include consideration of whether the

release to a less restrictive alternative, pursuant to Section 6608, or an unconditional discharge, pursuant to 6605, is in the best interest of the person and conditions can be imposed that would Cal. Welf. & Inst. Code § 6604.9(b). If SDSH has reason to believe the person is no longer a sexually violent predator, it shall seek judicial review of the commitment. Cal. Welf. & Inst. Code § 6605(c). If SDSH determines that conditional release or unconditional discharge is appropriate, it shall authorize the committed person to petition the court for conditional release or unconditional discharge. Cal. Welf. & Inst. Code § 6604.9(d). The committed person also may petition the court for conditional release without the recommendation or concurrence of SDSH. Cal. Welf. & Inst. Code § 6608(a).

The court may deny a petition for conditional release without a hearing if it is based on frivolous grounds. Cal. Welf. & Inst. Code § 6608(a). If the petition is not based on frivolous danger to the health and safety of others in that it is likely that he or she will engage in sexually

violent criminal behavior due to his or her diagnosed mental disorder if under supervision and Cal. Welf. & Inst. Code § 6608(g). The committed person has the right to counsel and the appointment of experts for the hearing. Cal. Welf. & Inst. Code § 6608(a), (g). The committed person bears the burden of proof by a preponderance of the

appropriate, in which case the State bears the burden of proof. Cal. Welf. & Inst. Code § 6608(k). If the court determines that the committed person would not be a danger while under supervision and



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treatment, the person shall be placed in a conditional release program for one year. Cal. Welf. & Inst. Code § 6608(g). Thereafter, the committed person may petition the court for unconditional discharge. Cal. Welf. & Inst. Code § 6608(m).

If, upon receiving a petition for unconditional discharge, the court finds probable cause to believe that the committed person is not a danger to the health and safety of others and is not likely to engage in sexually violent criminal behavior if discharged, a hearing is conducted. Cal. Welf. & Inst. Code § 6605(a)(2). At the hearing, the committed person is entitled to the same constitutional protections afforded at the initial trial. Cal. Welf. & Inst. Code § 6605(a)(3). Either party may demand a jury trial. *Id.* The state bears the burden of proving, beyond a reasonable doubt, that the committed person remains a danger to the health and safety of others and is likely to engage in sexually violent criminal behavior if discharged. *Id.* If the petition is resolved in the Cal. Welf. & Inst. Code § 6605(b).

2. Claims Cognizable Only in Habeas Corpus filing a petition for a writ of habeas corpus. *Wilkinson v. Dotson*, 544 U.S. 74, 78 (2005). See 28

U.S.C. § 2254(a). Such claims may not be brought in a section 1983 action. Nor may Plaintiff seek to invalidate the fact or duration of his confinement indirectly through a judicial *Wilkinson*, 544 U.S. at 81. A section 1983 action is barred, no matter the relief sought, if success in that action would necessarily demonstrate the invalidity of confinement or its duration. *Id.* at 81-82; *Heck v. Humphrey*, 512 U.S. 477, 489 (1994) (unless and until favorable termination of the conviction or sentence, no cause of action under section 1983 exists); *Hufile v. Miccio-Fonseca*, 410 F.3d 1136, 1140 (9th Cir. 2005) (applying *Heck* to SVPA detainees with access to habeas relief).

Because of this, an order issued for Plaintiff to show cause why this action should not be dismissed as barred by *Heck v. Humphrey*. (Doc. 8.) In his response/objections, Plaintiff argues that, since he received a writ of habeas corpus on his civil detention which was based on invalid 2007 protocols, and the 2009 protocols under which he was reassessed are also invalid, it undermines his rights guaranteed by the federal constitution for him to be required to pursue a writ of habeas corpus again. (Doc. 11, 1:28-2:6.)

Plaintiff seeks declaratory judgment that the Defendants violated his rights without due consideration of the harm they caused, that they violated Plaintiff's due process rights, and denied him of his liberty interests and injunctive relief to prohibit Defendants from advocating that Plaintiff is a dangerous sex offender who requires an indeterminate commitment, from applying a diagnosis of pedophilia to Plaintiff as a justification for the false imprisonment that Plaintiff has endured because of the unreliable and misapplied protocol used to classify sex offenders' past criminal behavior, from diagnosing Plaintiff with an improperly adopted SAP based on an un-promulgated protocol, and from applying an un-promulgated protocol to re-litigate actions against Plaintiff. (Doc. 1, pp. 33-34.) While a claim for prospective relief often does not call into see *Edwards v. Balisok*, 520 U.S. 641, 648 the basis for his custody. He may not bring these claims in a section 1983 action.



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Wilkinson, 544 U.S. at 78.

and his request for a declaration to that effect, are barred on the same ground. See Huftile, 410 F.3d at 1141 (concluding that challenge to SVPA assessments would imply invalidity of civil commitment and therefore could only be brought in habeas corpus). To the extent his claims are based on the use of the assessments in his civil commitment proceedings, they present a direct challenge to the validity of his confinement, and may not be brought in this action. Wilkinson, 544 U.S. at 81. To the extent Plaintiff attempts to assert due process rights in this assessment process itself, any claim as to the propriety of the assessments is so related to the civil commitment proceeding that success thereon would imply the invalidity of his confinement: absent the allegedly deficient assessments, no petition for commitment would have been filed, and there would have been no basis for the Superior Court to proceed on the petition to civilly commit Plaintiff under the SVPA. Huftile, 410 F.3d at 1141.

direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or from bringing his claims under section 1983. Heck, 512 U.S. at 487.

3. Prospective Relief from Future Assessments Edwards leaves open the possibility for Plaintiff to seek prospective relief in a section 1983 action to prevent future injury caused by future assessments. 520 U.S. at 648. However, Plaintiff has not specifically articulated such a claim. Moreover, even if he wishes to do so, his allegations would not be cognizable.

Plaintiff alleges the assessments violated his procedural and substantive Due Process rights. However, Plaintiff does not identify any process due to him, under the SVPA or otherwise, that was denied in the assessment process. Significantly, the assessments are not. Rather, Plaintiff may petition the court for conditional release without the recommendation or concurrence of SDSH. Cal. Welf. & Inst. Code § 6608(a), which Plaintiff has the right to counsel and to retain a

Welf. & Inst. Code § 6608. His ultimate release from commitment is determined by a judge or jury in a proceeding in which Plaintiff maintains the right to counsel, to retain experts, and where the State bears the burden of proof beyond a reasonable doubt. Cal. Welf. & Inst. Code § 6605. The SVPA provides sufficient procedural mechanisms for Plaintiff to challenge the assessments and to demonstrate that he no longer qualifies for civil detention. These protections are such that any flaws in the assessment process do not rise to a due process violation. II. Conclusion & Recommendations

challenge which may be brought only in a petition for a writ of habeas corpus. Thus, Plaintiff has

failed to state any claims that are cognizable under section 1983. To the extent Plaintiff could amend to seek relief that is not so barred, his allegations fail to state a cognizable claim for the reasons stated. These deficiencies are not capable of being cured through amendment. Akhtar v. Mesa, 698 F.3d 1202, 1212-13 (9th Cir. 2012). Plaintiff should not be given leave to amend his section 1983 claims.



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habeas petition form for Plaintiff to file a habeas petition setting forth facts supporting his challenge to the fact and/or the duration of his confinement/detention. Alternatively, if Plaintiff no longer wishes to pursue this action, he should file a notice of voluntary dismissal. Fed. R. Civ. P. 41(a)(1)(A)(i).

Based on the foregoing, it is HEREBY RECOMMENDED that:

1. DISMISSED for failure to state a claim upon

which relief can be granted. These Findings and Recommendations will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. ' 636(b)(l). Within 30 days after being served with these Findings and Recommendations, Plaintiff may file written objections with the Court. The document should be captioned AObjections to Magistrate Judge=s Findings and Recommendations.@

Plaintiff is advised that failure to file objections within the specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. Nov. 18, 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)). IT IS SO ORDERED. Dated: April 14, 2015 /s/ Jennifer L. Thurston UNITED STATES MAGISTRATE JUDGE

