IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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STANLEY E. MARTIN, JR.,

OPINION AND ORDER

Petitioner,

08-cv-518-bbc

v.

BYRAN BARTOW, Director,
Wisconsin Resource Center,

Respondent.

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This petition for a writ of habeas corpus under 28 U.S.C. § 2254 is before the court on remand for a decision on its merits. The Court of Appeals for the Seventh Circuit found that this court had erred in dismissing the petition as an untimely challenge to petitioner Stanley E. Martin, Jr.'s 1996 civil commitment under Wis. Stat. § 980.06. Martin v. Bartow, 628 F.3d 871 (7th Cir. 2010). Instead, the court held, the petition should have been read as directed to the state's 2005 decision to affirm the trial court's denial of his motion for discharge from custody. So viewed, the § 2254 petition was timely because petitioner filed it on September 2, 2008, less than one month after the state's final decision on his 2005 petition for discharge became final.

In support of his petition, petitioner argued that the state had violated his due process rights by continuing to hold him in civil confinement in reliance upon a pair of convictions from 1978 and 1979. He contended that, in doing so, the state was breaching the plea agreements it had reached with petitioner in those two cases, promising him that charges of sexual violence would be dismissed in return for his guilty pleas. He argued also that it was a violation of due process for the medical experts to base their opinions of his dangerousness on alleged conduct that was the subject of the dismissed charges. After reviewing the petition on its merits, I conclude that neither of petitioner's claims sets out a violation of his right to due process. Petitioner was given the benefit of the bargain set out in his plea agreements when the state convicted him on lesser charges and that bargain did not extend to the use of the dismissed charges in a future civil proceeding. As to the medical experts, they relied appropriately on the conduct that supported the reduced charges to which petitioner pleaded, as well as on petitioner's behavior and attitude after he had been convicted.

The record contains the following evidence.

RECORD EVIDENCE

Petitioner was charged in 1978 in Milwaukee County case no. I-9198 with rape and attempted murder after he raped a woman at gunpoint. Before trial, the state agreed to

dismiss the charges in return for petitioner's plea to injury by conduct regardless of life. Petitioner accepted the plea agreement and was sentenced to a stayed sentence of ten years and probation. Three months later he was arrested for raping a woman and beating her with a board. He was charged in Milwaukee County case no. J-3758 with second-degree sexual assault and threat to injure as a repeater. Again, the parties reached a plea agreement. Petitioner pleaded guilty to endangering safety by conduct regardless of life, the state dismissed the original counts and he was sentenced to a term of five years to run concurrently with the reinstated ten-year term of imprisonment imposed in I-9193. In 1988, petitioner was convicted of second degree sexual assault.

In 1996, when petitioner was due to be released from custody, the state petitioned for his civil commitment under Wis. Stat. ch. 980. A jury trial was held in the Circuit Court for Milwaukee County; petitioner was found to be a sexually violent person; and he was committed to the custody of the Department of Health and Social Services until he was no longer a sexually violent person. At the trial, psychologist Kenneth Lerner, an employee of the Department of Corrections, testified that he had discussed the 1978 and 1979 cases with petitioner. Petitioner had admitted in connection with the 1978 case that he raped a woman, who later escaped by jumping out a second-story window, but denied having done so at gunpoint. In connection with the 1979 case, he admitted having assaulted a woman he had never met before, but denied having hit her with a board. Lerner testified to other

matters, including petitioner's refusal to participate in treatment programs and Lerner's opinion that petitioner lacked remorse, was manipulative, impulsive and lacked control over his use of alcohol and drugs.

Petitioner appealed unsuccessfully from the 1996 decision. In subsequent years he filed various motions for discharge from his commitment. The only relevant one is the petition filed in 2005, in which he contended that his continued confinement was illegal because he was being held on the basis of unsupported diagnoses. He argued that this was a denial of his Sixth Amendment right to confront the witnesses against him. Pet.'s M. to Vacate, dkt. #16-9. The trial court denied the petition originally and on reconsideration, without any written ruling. Petitioner appealed the denial to the state court of appeals, contending that the decision to keep him confined was illegal and ineffective because the experts who provided the bases for the decision had relied improperly on criminal charges that had been reduced to lesser offenses. Ptr.'s Br., dkt. #51-1. This, he argued, was a breach of the plea agreements he had negotiated with the state in cases I-9193 and J-3758.

Opposing the appeal, the state raised a number of procedural reasons why the court of appeals did not need to reach the merits of the appeal and if it did, why it should affirm the circuit court's denial of the petition. The state court of appeals addressed none of the procedural issues and read petitioner's claim as raising only the question whether the state had proved that petitioner was a sexually violent person. It held that the state had met its

burden of proof by showing that petitioner had been convicted in 1988 of second-degree sexual assault, which is the prerequisite conviction of a sexually violent offense under Wis. Stat. § 980.02(2)(a)1 (1995-96), and "by presenting evidence of his sexually violent conduct that led to the ultimate convictions for injury by conduct regardless of life and endangering safety by conduct regardless of life." Wisconsin v. Martin, slip op. at ¶ 6, App. No. 2006AP2413 (Jan. 15, 2008), dkt. #16-20 at ¶ 6. Although the state court did not identify the cases from which this evidence came, it appears from the description of the cases that they are the two Milwaukee County cases at issue, I-9193 and J-3758. Id. at ¶ 5 (describing charges of rape and attempted murder that were reduced under a plea bargain to injury by conduct regardless of life and charges of second-degree sexual assault and threat to injure as a repeater that were reduced to endangering safety by conduct regardless of life). Without addressing petitioner's due process claim directly, the state court concluded that petitioner's commitment order was not based improperly on charges that had been dismissed. Id. at ¶ 6.

Petitioner petitioned for review by the state supreme court, but that court denied his petition on August 8, 2008. He filed this petition for a writ of habeas corpus within a month thereafter. I denied the petition after concluding that petitioner was challenging the merits of the 1996 determination that he was a sexually violent person rather than the 2008 court of appeals' decision affirming the legality of his continuing confinement. It was too late to

challenge the 1996 decision, so I dismissed his petition. The Court of Appeals for the Seventh Circuit reversed this decision after finding that petitioner's § 2254 petition was not untimely in the unusual circumstances of this case, in which the state court of appeals revisited the state's initial justifications for confining petitioner when it decided his 2005 petition for discharge. Correctly understood, the petition was directed to the most recent judgment in petitioner's case. Martin, 628 F.3d at 876.

OPINION

In the June 2009 order dismissing this petition as untimely, I determined that petitioner was contending that the state violated his rights under the due process clause of the United States Constitution by continuing his civil commitment in reliance upon (1) 1978 and 1979 sexual assault charges that were dismissed under a plea agreement (Milwaukee County cases I-9193 and J-3758) and (2) opinions from medical experts who considered the alleged conduct that was the subject of the dismissed charges. Because the state court of appeals did not address either of these contentions, although petitioner had argued them in his state appeal, the standard of review set forth in the Antiterrorism and Effective Death Penalty Act does not apply. Rather, the court must "dispose of the matter as law and justice require." Canaan v. McBride, 395 F.3d 376, 387 (7th Cir. 2005) (in situation in which state court does not decide state prisoner's habeas claims on merits and

claims were not procedurally defaulted, federal court reviews the claims "under the pre-AEDPA standard of 28 U.S.C. § 2243, which instructs [the court to] 'dispose of the matter as law and justice require'").

I turn first to petitioner's claim that his civil commitment is a violation of his due process rights because it rests on the state's breach of a plea agreement. Petitioner seems to think that when the state prosecutors promised him in his 1978 case, I-9193, and in his 1979 case, J-3758, that they would dismiss the more serious charges in return for his guilty plea to lesser charges in each case, the state was bound forever not to use the dismissed charges for any purpose whatsoever. He points to no evidence that the prosecutors in either case made such a promise in their plea agreement and he cites no law that would support his position that a plea agreement has such a far-reaching effect.

A plea agreement is essentially a contract. United States v. Thomas, 639 F.3d 786, 788 (7th Cir. 2011) (plea agreement is contract governed by ordinary contract law principles) (citing United States v. Quintero, 618 F.3d 746, 751 (7th Cir. 2010)). Petitioner was given certain promises by the state that the rape and attempted murder charges in case I-9193 and the sexual assault charge in case J-3758 would be dismissed in return for his plea of guilty to lesser charges; those promises were kept. The more serious charges against petitioner in each of those cases were dismissed in the criminal proceeding, just as the prosecutors had promised. Petitioner obtained all that he had bargained for.

The second prong of petitioner's due process claim rests on the alleged unconstitutionality of using unproved criminal conduct to prove that he should remain confined. Petitioner has shown no evidence that the state used such conduct to continue him in confinement. To the extent he is arguing that the experts continue to rely on evidence adduced at the 1996 trial, a review of that evidence shows that the experts relied on petitioner's own admissions to conclude that he had committed serious sexual assaults of women. Even if they had used the dismissed conduct, however, petitioner has cited no legal authority that would preclude the state from considering such conduct in a civil proceeding. He denies specifically that he is arguing that such use would be precluded by the double jeopardy clause, Ptr.'s Br., dkt. #53, at 13, which is wise because that clause does not provide him any assistance. State v. Carpenter, 197 Wis. 2d 252, 541 N.W.2d 105 (1995) (protections of double jeopardy clause do not apply to chapter 980 proceedings to determine sexually violent persons; such commitments are not punishment). See also Kansas v. Hendricks, 521 U.S. 346, 369 (1997) (holding that Kansas's civil commitment scheme for sexually violent predators is civil in nature so that neither double jeopardy clause nor ex post facto claims apply).

In summary, I conclude that petitioner is not entitled to habeas corpus relief on his claim that in 2005, Wisconsin denied him his right to due process under the United States Constitution when it continued his civil confinement under Wis. Stat. ch. 980.

ORDER

IT IS ORDERED that petitioner Stanley E. Martin, Jr.'s petition for a writ of habeas corpus under 28 U.S.C. § 2254 is DENIED.

Entered this 24th day of June, 2011.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge