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# SUPREME COURT OF THE UNITED STATES

No. 99–1185

MARK SELING, SUPERINTENDENT, SPECIAL COMMITMENT CENTER, PETITIONER *v.* ANDRE BRIGHAM YOUNG

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[January 17, 2001]

JUSTICE O'CONNOR delivered the opinion of the Court.

Washington State's Community Protection Act of 1990 authorizes the civil commitment of "sexually violent predators," persons who suffer from a mental abnormality or personality disorder that makes them likely to engage in predatory acts of sexual violence. Wash. Rev. Code §71.09.010 *et seq.* (1992). Respondent, Andre Brigham Young, is confined as a sexually violent predator at the Special Commitment Center (Center), for which petitioner is the superintendent. After respondent's challenges to his commitment in state court proved largely unsuccessful, he instituted a habeas action under 28 U. S. C. §2254, seeking release from confinement. The Washington Supreme Court had already held that the Act is civil, *In re Young*, 122 Wash. 2d 1, 857 P. 2d 989 (1993) (en banc), and this Court held a similar commitment scheme for sexually violent predators in Kansas to be civil on its face, *Kansas* v. *Hendricks,* 521 U. S. 346 (1997). The Court of Appeals for the Ninth Circuit nevertheless concluded that respondent could challenge the statute as being punitive "as applied" to him in violation of the Double Jeopardy and

*Ex Post Facto* Clauses, and remanded the case to the District Court for an evidentiary hearing.

## I

### A

Washington State's Community Protection Act of 1990 (Act) was a response to citizens' concerns about laws and procedures regarding sexually violent offenders. One of the Act's provisions authorizes civil commitment of such offenders. Wash. Rev. Code §71.09.010 *et seq.* (1992 and Supp. 2000). The Act defines a sexually violent predator as someone who has been convicted of, or charged with, a crime of sexual violence and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility. §71.09.020(1) (Supp. 2000). The statute reaches prisoners, juveniles, persons found incompetent to stand trial, persons found not guilty by reason of insanity, and persons at any time convicted of a sexually violent offense who have committed a recent overt act. §71.09.030. Generally, when it appears that a person who has committed a sexually violent offense is about to be released from confinement, the prosecuting attorney files a petition alleging that that person is a sexually violent predator. *Ibid.* That filing triggers a process for charging and trying the person as a sexually violent predator, during which he is afforded a panoply of protections including counsel and experts (paid for by the State in cases of indigency), a probable cause hearing, and trial by judge or jury at the individual's option. §§71.09.040–71.09.050. At trial, the State bears the burden to prove beyond a reasonable doubt that the person is a sexually violent predator. §71.09.060(1).

Upon the finding that a person is a sexually violent predator, he is committed for control, care, and treatment to the custody of the department of social and health

services. *Ibid.* Once confined, the person has a right to adequate care and individualized treatment. §71.09.080(2). The person is also entitled to an annual examination of his mental condition. §71.09.070. If that examination indicates that the individual's condition is so changed that he is not likely to engage in predatory acts of sexual violence, state officials must authorize the person to petition the court for conditional release or discharge. §71.09.090(1). The person is entitled to a hearing at which the State again bears the burden of proving beyond a reasonable doubt that he is not safe to be at large. *Ibid.* The person may also independently petition the court for release. §71.09.090(2). At a show cause hearing, if the court finds probable cause to believe that the person is no longer dangerous, a full hearing will be held at which the State again bears the burden of proof. *Ibid.*

The Act also provides a procedure to petition for conditional release to a less restrictive alternative to confinement. §71.09.090. Before ordering conditional release, the court must find that the person will be treated by a state certified sexual offender treatment provider, that there is a specific course of treatment, that housing exists that will be sufficiently secure to protect the community, and that the person is willing to comply with the treatment and supervision requirements. §71.09.092. Conditional release is subject to annual review until the person is unconditionally released. §§71.09.096, 71.09.098.

B

Respondent, Andre Brigham Young, was convicted of six rapes over three decades. App. to Pet. for Cert. 33a. Young was scheduled to be released from prison for his most recent conviction in October 1990. One day prior to his scheduled release, the State filed a petition to commit Young as a sexually violent predator. *Id.*, at 32a.

At the commitment hearing, Young's mental health

experts testified that there is no mental disorder that makes a person likely to reoffend and that there is no way to predict accurately who will reoffend. The State called an expert who testified, based upon a review of Young's records, that Young suffered from a severe personality disorder not otherwise specified with primarily paranoid and antisocial features, and a severe paraphilia, which would be classified as either paraphilia sexual sadism or paraphilia not otherwise specified (rape). See generally American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders 522–523, 530, 532, 634, 645–646, 673 (4th ed. 1994). In the state expert's opinion, severe paraphilia constituted a mental abnormality under the Act. The State's expert concluded that Young's condition, in combination with the personality disorder, the span of time during which Young committed his crimes, his recidivism, his persistent denial, and his lack of empathy or remorse, made it more likely than not that he would commit further sexually violent acts. The victims of Young's rapes also testified. The jury unanimously concluded that Young was a sexually violent predator.

Young and another individual appealed their commitments in state court, arguing that the Act violated the Double Jeopardy, *Ex Post Facto*, Due Process, and Equal Protection Clauses of the Federal Constitution. In major respects, the Washington Supreme Court held that the Act is constitutional. *In re Young*, 122 Wash. 2d 1, 857 P. 2d 989 (1993) (en banc). To the extent the court concluded that the Act violated due process and equal protection principles, those rulings are reflected in subsequent amendments to the Act. See Part I–A, *supra*.

The Washington court reasoned that the claimants' double jeopardy and *ex post facto* claims hinged on whether the Act is civil or criminal in nature. Following this Court's precedents, the court examined the language of the Act, the legislative history, and the purpose and

effect of the statutory scheme. The court found that the legislature clearly intended to create a civil scheme both in the statutory language and legislative history. The court then turned to examine whether the actual impact of the Act is civil or criminal. The Act, the court concluded, is concerned with treating committed persons for a current mental abnormality, and protecting society from the sexually violent acts associated with that abnormality, rather than being concerned with criminal culpability. The court distinguished the goals of incapacitation and treatment from the goal of punishment. The court found that the Washington Act is designed to further legitimate goals of civil confinement and that the claimants had failed to provide proof to the contrary. 122 Wash. 2d, at 18–25, 857 P. 2d, at 996–1000.

The Act spawned several other challenges in state and federal court, two of which bear mention. Richard Turay, committed as a sexually violent predator, filed suit in Federal District Court against Center officials under Rev. Stat. §1979, 42 U. S. C. §1983, alleging unconstitutional conditions of confinement and inadequate treatment at the Center. In 1994, a jury concluded that the Center had failed to provide constitutionally adequate mental health treatment. App. 64–68. The court ordered officials at the Center to bring the institution up to constitutional standards, appointing a Special Master to monitor progress at the Center. The Center currently operates under an injunction. *Turay* v. *Seling*, 108 F. Supp. 2d 1148 (WD Wash. 2000). See also Brief for Petitioner 8–9.

Turay also appealed his commitment as a sexually violent predator in state court, claiming, among other things, that the conditions of confinement at the Center rendered the Washington Act punitive "as applied" to him in violation of the Double Jeopardy Clause. The Washington Supreme Court ruled that Turay's commitment was valid. *In re Turay*, 139 Wash. 2d 379, 986 P. 2d 790 (1999)

(en banc). The court explained that in *Young*, it had concluded that the Act is civil. 139 Wash. 2d, at 415, 986 P. 2d, at 869. The court also noted that this Court had recently held Kansas' Sexually Violent Predator Act, nearly identical to Washington's Act, to be civil on its face. *Ibid.* The Washington Supreme Court rejected Turay's theory of double jeopardy, reasoning that the double jeopardy claim must be resolved by asking whether the Act itself is civil. *Id.*, at 416–417, 986 P. 2d, at 810 (citing *Hudson* v. *United States,* 522 U. S. 93 (1997)). The court concluded that Turay's proper remedy for constitutional violations in conditions of confinement at the Center was his §1983 action for damages and injunctive relief. 139 Wash. 2d, at 420, 986 P. 2d, at 812.

C

That brings us to the action before this Court. In 1994, after unsuccessful challenges to his confinement in state court, Young filed a habeas action under 28 U. S. C. §2254 against the superintendent of the Center. Young contended that the Act was unconstitutional and that his confinement was illegal. He sought immediate release. The District Court granted the writ, concluding that the Act violated substantive due process, that the Act was criminal rather than civil, and that it violated the double jeopardy and *ex post facto* guarantees of the Constitution. *Young* v. *Weston*, 898 F. Supp. 744 (WD Wash. 1995). The superintendent appealed. While the appeal was pending, this Court decided *Kansas* v. *Hendricks,* 521 U. S. 346 (1997), which held that Kansas' Sexually Violent Predator Act, on its face, met substantive due process requirements, was nonpunitive, and thus did not violate the Double Jeopardy and *Ex Post Facto* Clauses. The Ninth Circuit Court of Appeals remanded Young's case to the District Court for reconsideration in light of *Hendricks.* 122 F. 3d 38 (1997).

On remand, the District Court denied Young's petition.

Young appealed and the Ninth Circuit reversed and remanded in part and affirmed in part. 192 F. 3d 870 (1999). The Ninth Circuit affirmed the District Court's ruling that Young's confinement did not violate the substantive due process requirement that the State prove mental illness and dangerousness to justify confinement. *Id.*, at 876. The Court of Appeals also left undisturbed the District Court's conclusion that the Act meets procedural due process and equal protection guarantees, and the District Court's rejection of Young's challenges to his commitment proceedings. *Id.*, at 876–877. Young did not seek a petition for a writ of certiorari to the Ninth Circuit for its decision affirming the District Court in these respects, and accordingly, those issues are not before this Court.

The Ninth Circuit reversed the District Court's determination that because the Washington Act is civil, Young's double jeopardy and *ex post facto* claims must fail. The "linchpin" of Young's claims, the court reasoned, was whether the Act was punitive "as applied" to Young. *Id.*, at 873. The court did not read this Court's decision in *Hendricks* to preclude the possibility that the Act could be punitive as applied. The court reasoned that actual conditions of confinement could divest a facially valid statute of its civil label upon a showing by the clearest proof that the statutory scheme is punitive in effect. 192 F. 3d, at 874.

The Court of Appeals reviewed Young's claims that conditions of confinement at the Center were punitive and did not comport with due process. *Id.*, at 875. Young alleged that for seven years, he had been subject to conditions more restrictive than those placed on true civil commitment detainees, and even state prisoners. The Center, located wholly within the perimeter of a larger Department of Corrections (DOC) facility, relied on the DOC for a host of essential services, including library services, medical care, food, and security. More recently, Young claimed,

the role of the DOC had increased to include daily security "walk-throughs." Young contended that the conditions and restrictions at the Center were not reasonably related to a legitimate nonpunitive goal, as residents were abused, confined to their rooms, subjected to random searches of their rooms and units, and placed under excessive security.

Young also contended that conditions at the Center were incompatible with the Act's treatment purpose. The Center had a policy of videotaping therapy sessions and withholding privileges for refusal to submit to treatment. The Center residents were housed in units that, according to the Special Master in the *Turay* litigation, were clearly inappropriate for persons in a mental health treatment program. The Center still lacked certified sex offender treatment providers. Finally, there was no possibility of release. A court-appointed resident advocate and psychologist concluded in his final report that because the Center had not fundamentally changed over so many years, he had come to suspect that the Center was designed and managed to punish and confine individuals for life without any hope of release to a less restrictive setting. 192 F. 3d, at 875. See also Amended Petition for Writ of Habeas Corpus, Supplemental Brief on Remand, and Motion to Alter Judgment 4–5, 8–9, 11–12, 15, 20, 24–26, in No. C94–480C (WD Wash.), Record, Doc. Nos. 57, 155, and 167.

The Ninth Circuit concluded that "[b]y alleging that [the Washington Act] is punitive as applied, Young alleged facts which, if proved, would entitle him to relief." 192 F. 3d, at 875. The court remanded the case to the District Court for a hearing to determine whether the conditions at the Center rendered the Act punitive as applied to Young. *Id.*, at 876.

This Court granted the petition for a writ of certiorari, 529 U. S. 1017 (2000), to resolve the conflict between the

Ninth Circuit Court of Appeals and the Washington Supreme Court. Compare 192 F. 3d 870 (1999), with *In re Turay*, 139 Wash. 2d 379, 986 P. 2d 790 (1999).

II

As the Washington Supreme Court held and the Ninth Circuit acknowledged, we proceed on the understanding that the Washington Act is civil in nature. The Washington Act is strikingly similar to a commitment scheme we reviewed four Terms ago in *Kansas* v. *Hendricks*, 521 U. S. 346 (1997). In fact, Kansas patterned its Act after Washington's. See *In re Hendricks*, 259 Kan. 246, 249, 912 P. 2d 129, 131 (1996). In *Hendricks*, we explained that the question whether an Act is civil or punitive in nature is initially one of statutory construction. 521 U. S., at 361 (citing *Allen* v. *Illinois*, 478 U. S. 364, 368 (1986)). A court must ascertain whether the legislature intended the statute to establish civil proceedings. A court will reject the legislature's manifest intent only where a party challenging the Act provides the clearest proof that the statutory scheme is so punitive in either purpose or effect as to negate the State's intention. 521 U. S., at 361 (citing *United States* v. *Ward*, 448 U. S. 242, 248–249 (1980)). We concluded that the confined individual in that case had failed to satisfy his burden with respect to the Kansas Act. We noted several factors: The Act did not implicate retribution or deterrence; prior criminal convictions were used as evidence in the commitment proceedings, but were not a prerequisite to confinement; the Act required no finding of scienter to commit a person; the Act was not intended to function as a deterrent; and although the procedural safeguards were similar to those in the criminal context, they did not alter the character of the scheme. 521 U. S., at 361–365.

We also examined the conditions of confinement provided by the Act. *Id.*, at 363–364. The Court was aware that sexually violent predators in Kansas were to be held

in a segregated unit within the prison system. *Id.*, at 368. We explained that the Act called for confinement in a secure facility because the persons confined were dangerous to the community. *Id.*, at 363. We noted, however, that conditions within the unit were essentially the same as conditions for other involuntarily committed persons in mental hospitals. *Ibid.* Moreover, confinement under the Act was not necessarily indefinite in duration. *Id.*, at 364. Finally, we observed that in addition to protecting the public, the Act also provided treatment for sexually violent predators. *Id.*, at 365–368. We acknowledged that not all mental conditions were treatable. For those individuals with untreatable conditions, however, we explained that there was no federal constitutional bar to their civil confinement, because the State had an interest in protecting the public from dangerous individuals with treatable as well as untreatable conditions. *Id.*, at 366. Our conclusion that the Kansas Act was "nonpunitive thus remove[d] an essential prerequisite for both Hendricks' double jeopardy and *ex post facto* claims." *Id.*, at 369.

Since deciding *Hendricks*, this Court has reaffirmed the principle that determining the civil or punitive nature of an Act must begin with reference to its text and legislative history. *Hudson* v. *United States,* 522 U. S. 93 (1997). In *Hudson*, which involved a double jeopardy challenge to monetary penalties and occupational debarment, this Court expressly disapproved of evaluating the civil nature of an Act by reference to the effect that Act has on a single individual. Instead, courts must evaluate the question by reference to a variety of factors "'considered in relation to the statute on its face'"; the clearest proof is required to override legislative intent and conclude that an Act denominated civil is punitive in purpose or effect. *Id.*, at 100 (quoting *Kennedy* v. *Mendoza-Martinez,* 372 U. S. 144, 169 (1963)).

With this in mind, we turn to the Court of Appeals' determination that respondent could raise an "as-applied"

challenge to the Act on double jeopardy and *ex post facto* grounds and seek release from confinement. Respondent essentially claims that the conditions of his confinement at the Center are too restrictive, that the conditions are incompatible with treatment, and that the system is designed to result in indefinite confinement. Respondent's claims are in many respects like the claims presented to the Court in *Hendricks*, where we concluded that the conditions of confinement were largely explained by the State's goal to incapacitate, not to punish. 521 U. S., at 362–368. Nevertheless, we do not deny that some of respondent's allegations are serious. Nor do we express any view as to how his allegations would bear on a court determining in the first instance whether Washington's confinement scheme is civil. Here, we evaluate respondent's allegations as presented in a double jeopardy and *ex post facto* challenge under the assumption that the Act is civil.

We hold that respondent cannot obtain release through an "as-applied" challenge to the Washington Act on double jeopardy and *ex post facto* grounds. We agree with petitioner that an "as-applied" analysis would prove unworkable. Such an analysis would never conclusively resolve whether a particular scheme is punitive and would thereby prevent a final determination of the scheme's validity under the Double Jeopardy and *Ex Post Facto* Clauses. Brief for Petitioner 30; Reply Brief for Petitioner 9. Unlike a fine, confinement is not a fixed event. As petitioner notes, it extends over time under conditions that are subject to change. The particular features of confinement may affect how a confinement scheme is evaluated to determine whether it is civil rather than punitive, but it remains no less true that the query must be answered definitively. The civil nature of a confinement scheme cannot be altered based merely on vagaries in the implementation of the authorizing statute.

Respondent contends that the Ninth Circuit's "as-

applied" analysis comports with this Court's precedents. He points out that this Court has considered conditions of confinement in evaluating the validity of confinement schemes in the past. Brief for Respondent 11–16, 29 (citing *Hendricks*, *supra*, at 363; *Reno* v. *Flores,* 507 U. S. 292, 301–302 (1993); *United States* v. *Salerno,* 481 U. S. 739, 747–748 (1987); *Allen* v. *Illinois,* 478 U. S. 364, 373–374 (1986); *Schall* v. *Martin,* 467 U. S. 253, 269–273 (1984)). All of those cases, however, presented the question whether the Act at issue was punitive. Permitting respondent's as-applied challenge would invite an end run around the Washington Supreme Court's decision that the Act is civil in circumstances where a direct attack on that decision is not before this Court.

JUSTICE THOMAS, concurring in the judgment, takes issue with our view that the question before the Court concerns an as applied challenge to a civil Act. He first contends that respondent's challenge is not a true "as-applied" challenge because respondent does not claim that the statute "'by its own terms' is unconstitutional as applied . . . but rather that the statute is not being applied according to its terms at all." *Post*, at 2. We respectfully disagree. The Act requires "adequate care and individualized treatment," Wash. Rev. Code §71.09.080(2) (Supp. 2000), but the Act is silent with respect to the confinement conditions required at the Center, and that is the source of many of respondent's complaints, see *supra*, at 7–8. JUSTICE THOMAS next contends that we incorrectly assume that the Act is civil, instead of viewing the Act as "'*otherwise* . . . civil,' or civil 'on its face.'" *Post*, at 1 (emphasis added by THOMAS, J.). However the Washington Act is described, our analysis in this case turns on the prior finding by the Washington Supreme Court that the Act is civil, and this Court's decision in *Hendricks* that a nearly identical Act was civil. Petitioner could not have claimed that the Washington Act is "otherwise" or "fa-

cially" civil without relying on those prior decisions.

In dissent, JUSTICE STEVENS argues that we "incorrectly assum[e]" that the Act is "necessarily civil," *post*, at 2, but the case has reached this Court under that very assumption. The Court of Appeals recognized that the Act is civil, and treated respondent's claim as an individual, "as-applied" challenge to the Act. The Court of Appeals then remanded the case to the District Court for an evidentiary hearing to determine respondent's conditions of confinement. Contrary to the dissent's characterization of the case, the Court of Appeals did not purport to undermine the validity of the Washington Act as a civil confinement scheme. The court did not conclude that respondent's allegations, if substantiated, would be sufficient to refute the Washington Supreme Court's conclusion that the Act is civil, and to require the release of all those confined under its authority. The Ninth Circuit addressed only respondent's individual case, and we do not decide claims that are not presented by the decision below. *Matsushita Elec. Industrial Co.* v. *Epstein,* 516 U. S. 367, 379 (1996). We reject the Ninth Circuit's "as-applied" analysis for double jeopardy and *ex post facto* claims as fundamentally flawed.

## III

Our decision today does not mean that respondent and others committed as sexually violent predators have no remedy for the alleged conditions and treatment regime at the Center. The text of the Washington Act states that those confined under its authority have the right to adequate care and individualized treatment. Wash. Rev. Code §71.09.080(2) (Supp. 2000); Brief for Petitioner 14. As petitioner acknowledges, if the Center fails to fulfill its statutory duty, those confined may have a state law cause of action. Tr. of Oral Arg. 6, 10–11, 52. It is for the Washington courts to determine whether the Center is

operating in accordance with state law and provide a remedy.

State courts, in addition to federal courts, remain competent to adjudicate and remedy challenges to civil confinement schemes arising under the Federal Constitution. As noted above, the Washington Supreme Court has already held that the Washington Act is civil in nature, designed to incapacitate and to treat. *In re Young*, 122 Wash. 2d, at 18–25, 857 P. 2d, at 996–1000. Accordingly, due process requires that the conditions and duration of confinement under the Act bear some reasonable relation to the purpose for which persons are committed. *Foucha* v. *Louisiana,* 504 U. S. 71, 79 (1992); *Youngberg* v. *Romeo,* 457 U. S. 307, 324 (1982); *Jackson* v. *Indiana,* 406 U. S. 715, 738 (1972).

Finally, we note that a §1983 action against the Center is pending in the Western District of Washington. See *supra*, at 6–7. The Center operates under an injunction that requires it to adopt and implement a plan for training and hiring competent sex offender therapists; to improve relations between residents and treatment providers; to implement a treatment program for residents containing elements required by prevailing professional standards; to develop individual treatment programs; and to provide a psychologist or psychiatrist expert in the diagnosis and treatment of sex offenders to supervise the staff. App. 67. A Special Master has assisted in bringing the Center into compliance with the injunction. In its most recent published opinion on the matter, the District Court noted some progress at the Center in meeting the requirements of the injunction. *Turay* v. *Seling*, 108 F. Supp. 2d, at 1154–1155.

This case gives us no occasion to consider how the civil nature of a confinement scheme relates to other constitutional challenges, such as due process, or to consider the extent to which a court may look to actual conditions of

confinement and implementation of the statute to determine in the first instance whether a confinement scheme is civil in nature. JUSTICE SCALIA, concurring, contends that conditions of confinement are irrelevant to determining whether an Act is civil unless state courts have interpreted the Act as permitting those conditions. By contrast, JUSTICE STEVENS would consider conditions of confinement at any time in order to gain "full knowledge of the effects of the statute." *Post*, at 3.

Whether a confinement scheme is punitive has been the threshold question for some constitutional challenges. See, *e.g.*, *Kansas* v. *Hendricks*, 521 U. S. 346 (1997) (double jeopardy and e*x post facto*); *United States* v. *Salerno*, 481 U. S. 739 (1987) (due process); *Allen* v. *Illinois*, 478 U. S. 364 (1986) (Fifth Amendment privilege against self-incrimination). Whatever these cases may suggest about the relevance of conditions of confinement, they do not endorse the approach of the dissent, which would render the inquiry into the "effects of the statute," *post*, at 3, completely open ended. In one case, the Court refused to consider alleged confinement conditions because the parties had entered into a consent decree to improve conditions. *Flores*, 507 U. S., at 301. The Court presumed that conditions were in compliance with the requirements of the consent decree. *Ibid.* In another case, the Court found that anecdotal case histories and a statistical study were insufficient to render a regulatory confinement scheme punitive. *Martin*, 467 U. S., at 272. In such cases, we have decided whether a confinement scheme is punitive notwithstanding the inherent difficulty in ascertaining current conditions and predicting future events.

We have not squarely addressed the relevance of conditions of confinement to a first instance determination, and that question need not be resolved here. An Act, found to be civil, cannot be deemed punitive "as applied" to a single individual in violation of the Double Jeopardy and *Ex Post*

*Facto* Clauses and provide cause for release.

The judgment of the United States Court of Appeals for the Ninth Circuit is therefore reversed, and the case is remanded for further proceedings consistent with this opinion.

*It is so ordered.*