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Digest: In re Smith

Ryan Odenwalder

Opinion by Moreno, J., expressing the unanimous view of the Court.

Issue

Can a commitment be authorized under the Sexually Violent Predator Act (SVP Act)¹ when the felony conviction, that was the basis of his custody at the time the commitment proceedings began, is reversed on appeal and the prosecutor does not retry the underlying case?

Facts

In 1982, Smith was convicted of four counts of oral copulation on a child under sixteen years old and one count of sodomy on a child under sixteen years old under sections 288 and 286 of the Penal Code.² Six years later, he was convicted of fifteen counts of committing lewd and lascivious acts on a child under fourteen years old under Section 288.³ He was released on parole in July 1995 and he completed parole in July 1998.⁴

Because of his offenses, Smith was required to register as a sex offender.⁵ In April 1999, Smith moved to New York.⁶ In September 1999, he was arrested there after allegedly failing to send a change-of-address card to the Long Beach Police Department.⁷ He was convicted in California of failing to register as a sex offender, where he was sentenced to five years in state prison.⁸ After the court of appeal affirmed his conviction, the California Supreme Court granted review.⁹

While waiting for the Court's decision, the director of the Department of Corrections determined that Smith may be a sexually violent predator (SVP) under Section 6601 of the Welfare and Institutions Code (the SVP Act).¹⁰ Pursuant to the SVP Act, Smith was evaluated by psychiatric

¹ CAL. WELF. & INST. CODE §§ 6600–6667.

² *In re Smith*, 178 P.3d 446, 448 (Cal. 2008).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

evaluators who eventually agreed that he qualified as an SVP.¹¹ On December 15, 2003, the prosecutor filed a petition to have Smith committed as an SVP.¹²

On March 29, 2004, the California Supreme Court reversed Smith's conviction, holding that the trial court committed reversible error when it instructed a deadlocked jury that registered sex offenders are responsible for ensuring that the police receive the change-of-address notification.¹³ Thereafter, Smith filed numerous habeas corpus petitions challenging the continuation of the SVP commitment proceedings.¹⁴ The court of appeal rejected Smith's contention that the SVP Act did not authorize commitment because the basis of his custody was reversed.¹⁵ The Court granted review.¹⁶

Analysis

The Court reviewed the SVP Act, which allows the commitment of any individual in custody who has been convicted of a sexually violent offense against two or more persons and who has a diagnosed mental disorder that makes him a danger to others.¹⁷ The SVP Act provides that "[a] petition shall not be dismissed on the basis of a later judicial or administrative determination that the individual's custody was unlawful, if the unlawful custody was the result of a good faith mistake of fact or law."¹⁸

Smith argued that the statutory language, "unlawful custody," coupled with other legislative findings, indicated that the statute applied solely when the custody or length of the sentence is found unlawful.¹⁹ The Court agreed that this interpretation was reasonable, but said that the statutory language was broad enough to include wrongful conviction.²⁰

The Court then noted that the legislative history showed that the statute was enacted in response to two court of appeal decisions.²¹ In the first case, *Terhune v. Superior Court*, the appellate court invalidated a regulation promulgated by the Board of Prison Terms requiring felons that completed their sentence to remain in custody and receive psychiatric treatment.²² In the second case, *People v. Superior Court*, the appellate court required a felon to remain subject to SVP proceedings when the

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 448-49 (citing *People v. Smith*, 86 P.3d 348 (Cal. 2004)).

¹⁴ *Id.* at 449.

¹⁵ *Id.*

¹⁶ *Id.* at 449, 458.

¹⁷ *Id.* at 449 (citing CAL. WELF & INST. CODE §§ 6600, 6601(a)(1)).

¹⁸ *Id.* (quoting CAL. WELF & INST. CODE § 6601(a)(2)).

¹⁹ *Id.* at 449-50 (quoting CAL. WELF & INST. CODE § 6601(a)(2)).

²⁰ *Id.* at 450.

²¹ *Id.*

²² *Id.* at 450-51 (discussing 76 Cal. Rptr. 2d 841 (Ct. App. 1998)).

Department of Correction's improper revocation of his parole was based on a mistake of law rather than negligent or intentional misconduct.²³ The Court concluded that the legislature added Section 6601(a)(2) to adopt a rule similar to *People v. Superior Court*, addressing both good faith mistakes of fact and law.²⁴

Smith also argued that the legislative history showed that Section 6601(a)(2) was intended to prevent improper extensions of custody.²⁵ Thus, the statute was inapplicable to a reversed conviction.²⁶ The government, however, argued that the erroneous parole revocations in *Whitley* are similar to erroneous convictions and that, given the concern for public safety expressed behind the SVP Act, the statutory language should be broadly construed to cover both.²⁷ The Court found that both interpretations were reasonable because, although the legislature did not expressly include erroneous convictions, it did intend for the statute to be broadly applied.²⁸

The Court then turned to Smith's argument that the application of Section 6601(a)(2) to erroneous convictions would violate the Equal Protection clauses of the United States and California constitutions.²⁹ The Court found that strict scrutiny applied to claims of discrimination in civil commitment.³⁰ The Court discussed U.S. Supreme Court precedent holding that equal protection is violated when civil commitment standards applied to a defendant in custody are more lenient than standards applied to the general population.³¹ In *Conservatorship of Hofferber*, the Court held that separate treatment of mentally incompetent criminal defendants under California's general civil commitment statute, the Lanterman-Petris-Short Act (LPS Act), was justified under a strict scrutiny standard, due to the compelling interest in public safety.³²

Applying these principles, the Court found that Smith was treated differently under the SVP Act than those subject to the LPS Act, because the SVP Act requires only a finding of a mental disorder that makes the person likely to engage in sexually violent behavior if the person is in police custody.³³ The Court found that the classification of those in custody versus persons not in custody passed Equal Protection's strict scrutiny because "the Legislature could legitimately conclude . . . that any felonious conduct would warrant a finding of greater danger and a separate

23 *Id.* at 451 (discussing 81 Cal. Rptr. 2d 189 (Ct. App. 1999)).

24 *Id.* at 451-52.

25 *Id.* at 452.

26 *Id.*

27 *Id.* at 452-53.

28 *Id.* at 453.

29 *Id.*

30 *Id.* (citing *In re Moye*, 584 P.2d 1097 (Cal. 1978)).

31 *Id.* at 453-54 (discussing *Jackson v. Indiana*, 406 U.S. 715 (1972)).

32 *Id.* at 454-55 (discussing 616 P.2d 836 (Cal. 1980)).

33 *Id.* at 456-57.

classification.”³⁴

However, the Court said that the separate treatment, when the conviction that is the basis of custody has been reversed, was unjustified on constitutional grounds.³⁵ The Court noted that Smith was in the same position as a person who was charged but not convicted of an offense.³⁶ Such a person, the Court stated, would not be subject to SVP proceedings upon the diagnosis of a mental health professional under the LPS Act.³⁷ Thus, the Court found that the SVP Act did not apply to Smith.³⁸

Holding

The Court held that the SVP proceedings against defendant were subject to dismissal based on the Court’s reversal of the conviction that was the basis for his custody.³⁹ The Court reversed the judgment of the court of appeal.⁴⁰

Legal Significance

As a result of this decision, SVP proceedings against a convicted sex offender may be halted if the conviction is reversed and either the defendant is not retried, or the defendant is retried but not reconvicted. The Court limited its holding to Smith’s unique situation.⁴¹ In this situation, the defendant may be subject to the LPS Act, but that act requires a more rigorous standard to involuntarily commit a person. The decision will create an increased burden on the prosecutors who believe a defendant is dangerous to society, but whose conviction is reversed.

The decision accepted the legislature’s classifications as articulated by the SVP and LPS Acts, and the SVP Act will not be impacted if the defendant’s conviction is upheld on appeal, or if the conviction is overturned but the defendant is retried and reconvicted. The decision also will not affect when an SVP petition may be filed—if the defendant appeals, the petition can be stayed until a decision is made. Finally, the Court emphasized that “the Legislature could amend the SVP Act so that it would constitutionally apply to someone in Smith’s position” by changing the language in the statute.⁴²

³⁴ *Id.* at 457–58.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* at 448.

⁴⁰ *Id.*

⁴¹ *Id.* at 458.

⁴² *Id.*