

Cause No:

In The Supreme Court of Texas

Original Proceedings

Writ of Habeas Corpus

In Re Lonnie Kade Welsh

Relief from

In re Commitment of Lonnie Kade Welsh

Trail Court No. 15-01-0659-cv

435th Judicial District

Montgomery County, Texas

RECEIVED
IN SUPREME COURT

NOV 19 2020

CLARENCE M. ...
By _____ Deputy

Party of Interest:

Petitioner: Lonnie Kade Welsh

2600 South Sunset

Littlefield, TX 79339

Respondent: Marsha McLane

4616 West Howard Ln.

Building 2 Suite 350

Austin, TX 78728

Table of Content

Jurisdiction.....	3
Procedural History.....	3
Standard of Review	3
Ground One	4
Facts in support of Ground One	4,5,6
Ground Two	6
Facts in support of Ground Two	6,7
Ground Three	7
Facts in support of Ground Three	7,8,9
Ground Four	9
Facts in Support of Ground Four	9
Prayer	10
Declaration	10
Table of Appendix	10
Certificate of Service	10

I. Jurisdiction

Texas Government Code Sec. 22.00 (e)

The Supreme Court or a justice of the Supreme Court either in term time or vacation, may issue a writ of habeas corpus when a person is restrained in his liberty by virtue of an order, process, or commitment issued by a court of judge on account of the violation of an order, judgement, or decree previously made, rendered, or entered by the court or judge in a civil case.

Texas Constitution Art. V Sec.

II. Procedural History

Lonnie Kade Welsh was civilly committed on 10/14/2015 as a Sexually Violent Predator under Texas Health and Safety Code 841. Welsh's attorney of record was Kim Cleary of the State Counsel for Offenders. Welsh was released from the Texas Department of Criminal Justice on 11/3/2015 into the custody of Texas Civil Commitment Office. Welsh appealed his civil commitment on December 04, 2015 and was denied on August 25, 2016 by the Ninth Court of Appeals in Beaumont, Texas. Welsh's appeal attorney was Johanna Ward of the State Counsel for Offenders. Welsh is in custody of Marsha McLane for the purpose of his Civil Commitment who is the head of Texas Civil Commitment Office.

III Standard of Review

Under Texas Supreme Court standards, a reviewing court mirrors the standard used by the fact finder at trial for legal and factual review. See *In The Interest of A.C. J. Y. Jr., L.B. and E.B. children* 560 S.W. 3d 624,630 (Tex 2018). Welsh was tried under the beyond reasonable doubt standard. See 841.061. Therefore, the standard of proof at the trial need to reach the level or moral certainty that would not leave a person hesitant to act on a finding that Welsh has a Behavioral Abnormality for commitment. See *Victor v Nebraska* 511 U.S.1, 8 and *id* at 20.

Though this court has never held and ineffective assistance of counsel for the involuntary civilly committed to other circuit courts have under the *Strickland v Washington* professional standard framework. See *Donihoo v Lewis* 2010 Tex. App. Lexis 2343 Texas. Court of Appeals Houston 1st District; *In re Protection of H.W.* 85 S.W. 3d 348,355-356 (Tex. App. Tyler 2002 no. pet.).

Ground one: The state presented no evidence, In competent evidence, or no more than a scintilla of evidence to commit Lonnie Kade Welsh.

Facts in Support of Ground One: The state presented on expert Doctor McGarrahan and Welsh presented and expert Doctor Marrow. Both Doctors claim they used methodologies consistent with professional standards to form the basis of their respected opinions.

The State's expert Dr. McGarrahn diagnosed Welsh with a multifaceted DSM-iv diagnosis of not otherwise specified (NOS) paraphilia name the sexual fixation to include the nondiagnostic criteria of pedophilia features, and the made-up diagnosis of Hebephilia and Ephebophilia. That she describes a capturing the complete picture of Welsh's sexual deviancy. Dr. McGarrahan also made actual test of a Static 99R score of 4 and PCL-R score of 30. Moreover, McGarrahn relied heavily on Welsh's sex offenses being considered in her opinion to be sexual deviant. Therefore, the expert concluded that

Welsh suffered from an emotional or volitional disorder that predisposes Welsh to commit act of sexual violence.

Conversely, Dr. Marrow, the defense expert concluded Welsh does not suffer from any capacity disorder that predisposes Welsh to acts of sexual violence. Dr. Marrow did not make a sexual disorder diagnosis under either the DSM-IV or DSM-V. She specifically stated that if she could have made a diagnosis she would have. Dr. Marrow also used the actual test of Static 99R arriving at the same score as McGarrhan of 4 and used the PCL-R but coming to a different score of 25. Dr. Marrow was of the opinion that other reasons were the cause of Welsh's sexual crimes other than an emotional or volitional capacity disorder.

As a preliminary matter it must be noted that the jury was not required to find if welsh had either an emotional or volitional capacity disorder. Therefore, the court should affirm to both definition or to neither. Volitional under its common meaning would be defined as free-will, Emotional should be used as a term of art in the mental health community and under the legal doctrine of in pari materia as a term that applies to the same subject matter for others who are civilly committed.

Both Dr. McGurrahan and Dr. Marrow relied upon Welsh's criminal history, the DSM, and the Static 99R, and the PCL-R. Dr. McGarrahn never explained why her methodology was superior to Dr. Marrows based on verifiable evidence within her methodology. Neither did Dr. McGarrahn eliminate any other causes for Welsh's sexual acts, other than the Behavior Abnormality that consists of the Emotional or Volitional capacity disorder. As there can be more than one cause to commit sex crimes this is a critical gap in her methodology.

Additionally, Dr. McGrrahan never established how her methodology is connected to either the Emotional or Volitional capacity disorder. She does not adequately explain how Welsh had free-will and the capacity to commit the crimes intentionally but now is predisposed to commit sex crimes by either the emotional or volitional disorder. She specifically never established which capacity

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.