ORIGINAL

03-5043

(Docket Number)

Supreme Court, U.S.
FILED
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IN THE
SUPREME COURT OF THE UNITED STATES

IN RE COY PHELPS

Petitioner

PETITION FOR A WRIT OF HABEAS CORPUS

SUBMITTED TO INDIVIDUAL JUSTICE ANTONIN SCALIA

Coy Phelps In Pro Se
COY PHELPS 78872-011
Federal Prison
P. O. Box 1600
Butner, North Carolina
27509

QUESTIONS PRESENTED

Should the U. S. Supreme Court resolve the diverse opinions among the Circuit Courts on the issue of release conditions for insanity acquittees

Can District Courts impose its own release conditions upon an insanity acquittee under 18 USC 4243(f) when the treating doctors do not recommend any conditions

Can a release for an insanity acquittee be revoked for reasons other than failing to comply with release conditions under 18 USC 4243(g)

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I
OPINIONS BELOW

A published opinion appears as U.S. v Phelps, 9C2002, 283 F3d 1176. A copy appears in APPENDIX A at page 20. The 9th Circuit made its opinion on March 21, 2002 by Chief Judge Hug. No Petition for a rehearing was made.

Pursuant to Supreme Court Rule 29, the Petitioner (Phelps) states that the Constitutionality of a law is brought into question.

The U. S. Attorney General and the U. S. Solicitor General are served with the appropriate number of copies of this Petition. The 9th Circuit Court of Appeals did not certify to the U.S. Attorney General that the constitutionality of a law would be drawn into question.

II
JURISDICTION AND AUTHORITY

The U. S. District Court had jurisdiction in the original hearing under 18 USC 4243(f). And issued a release order on January 14th, 1999 releasing Phelps from the custody of the U. S. Bureau of Prisons and from the custody of the U. S. Marshals Service.(Appendix A

at page 19)

The 9th Circuit had jurisdiction under 28 USC 1291 and issued its opinion on March 21, 2002.

This court has jurisdiction and authority to review this habeas corpus action and to grant relief and remedy pursuant to Supreme Court Rule 22, 18 USC 4247(g),[1] 28 USC 1651, 28 USC 2201 and 2202[2], 28 USC 2241, and 42 USC 1988 (common law).

III
SUPREME COURT RULE 29 AND 28 USC 2242 STATEMENT

The Petitioner (Phelps) alleges the U. S. Court of Appeals for the Ninth Circuit abused its discretion, misinterpreted the provisions of the Federal mental health laws (18 USC 4243 and § 4247), made a clearly erroneous conclusion of law, and made a plain error in judgment.

Phelps states that the reason that he did not make a application to the U.S. District Court is because the District Court does not have proper jurisdiction. Districts courts cannot review the opinions of upper courts for abuse of discretion, erroneous conclusions of law, or for errors in judgments. Only the U.S. Supreme Court (or possibly the International Court) can review the opinion of the U. S. Court of Appeals.

III
CONSTITUTIONAL AND STATUTORY ISSUES INVOLVED

Phelps alleges a violation of his 1st, 4th, 5th, 6th, 8th, and 9th Amendment rights under the U.S. Constitution and a violation of his rights under 42 USC 2000bb-1(Religious

[1] Noting shall interfere with a Habeas Corpus- no prerequisites can be imposed
[2] Declaratory Relief and relief necessary to reach justice

Freedom Restoration Act.)

Phelps alleges the Courts misinterpreted 18 USC 4243 and misapplied its provisions that caused Phelps irreparable physical, mental, emotional, and spiritual loss, deprivation, harm, injury, anguish, pain, and suffering.

Phelps alleges the U. S. attorney General misapplied the provisions of 18 USC 4243 and § 4247 and caused Phelps to be falsely imprisoned. Because of his actions, he created a domino effect that caused the courts to also misapply the laws and treat Phelps as a convicted and sentenced prisoner.

If the U. S. Attorney General wishes to confine the Insanity acquittee, Subsection(e) of 18 USC 4243 mandate that a insanity acquittee be " hospitalized " in a psychiatric hospital (" suitable facility"...see 18 USC 4247(a)(2)).(See APPENDIX B, page).

The Attorney General did not comply with the mandate to "hospitalize" Phelps, but rather, the Attorney General placed Phelps in the custody of the Director of the U.S. Bureau of Prisons(BOP) to be **incarcerated** (not hospitalized) in the federal prison system and to be treated just as if he had been found guilty[3] and sentenced to a term of imprisonment.

The federal government does not have a civil hospital in which to confine insanity acquittees (Foucha v Louisana, 1994, 504 US 71 at 87) and none of the facilities in the U. S. Bureau of Prison system qualify as " hospitals" for the mentally ill (Williams v Richardson, 8C1981, 481 F2d 358 at 360) (citations omitted)

If the Attorney General wishes to confine Phelps, he is mandated by the provisions of 18 USC 4243(e) to "hospitalize" Phelps. But § 4243 is silent on just how he is to do it.

[3] 28 CFR 551.101 and Bureau of Prison Policy Statement 7331.03 (" Those committed under §4243 and §4246 will be treated as convicted prisoners."

For the answer we must turn to subsection (i) of 18 USC 4247. That section reveals that the Attorney General has only four(4) options for confinement. He can (1) Petition the State court for a State civil commitment in a state mental hospital pursuant to State laws, or (2) enter into a private contract with a State (or political sub-division), or (3) enter into a contract with a locality, or (4) enter into a contract with a private agency for the hospitalization, care, and treatment of Phelps. The Attorney General did not exercise any of these options. He **INCARCERATED** Phelps in federal prison to be treated just as if Phelps had been found guilty and sentenced to a term of imprisonment. Phelps has been falsely imprisoned since July of 1986.[4]

Phelps also alleges that the courts misapplied the criminal probation statutes (18 USC 3500 et. Seq. and §3600 et. Seq.) which also caused him irreparable physical, mental, emotional, and spiritual loss, harm, injury, anguish, pain, and suffering.

IV
BACKGROUND

Phelps was arrested for the crimes of bombings in September of 1985. Phelps maintained his innocence and told his attorney a bizarre story of being "framed" by a conspiracy that reached international dimensions. The conspiracy included a foreign government, the San Francisco, California Police department (SFPD), the Federal Bureau of Investigation (FBI), other Federal agencies, private organizations and private citizens that worked together, and in concert, with government agencies to either imprison Phelps or to kill him.

[4] False imprisonment is not the direct issue in this Petition although it is ancillary to the issue because "but for" the mis-actions of the Attorney General, Phelps would not be petitioning this court now. He set into motion a chain of events that not only violated Phelps' rights but caused him irreparable injury.

The attorney thought Phelps was insane and wanted to enter a plea of Not Guilty Only By Reason of Insanity (NGRI) but Phelps maintained his innocence and would not allow it. In a compromise, Phelps' attorney entered a dual plea of Not Guilty- Not Guilty Only by Reason of Insanity.

Phelps was examined by several psychiatrists for the prosecution, and the defense, and for the court. When Phelps told them of the bizarre story of being framed in a international "conspiracy," they all agreed that Phelps suffered from a "classic text book diagnosis of Paranoid Schizophrenia".[5]

A jury found Phelps NGRI on July 31, 1986 and Phelps was placed in the custody of the U. S. Attorney General pursuant to subsection (e) of 18 USC 4243.

The Attorney General, however, did not follow the law as prescribed by subsection (i) of 18 USC 4247 nor did he follow the provisions of § 4243. 18 USC 4243(e) requires Phelps to be **" hospitalized " in a psychiatric hospital** (suitable facility.)[6] The Attorney General misapplied the law and caused Phelps to be **imprisoned, and incarcerated**, in the U. S. Bureau of Prison (BOP) system to be treated as a convicted and sentenced prisoner[7] who had been found guilty of the 1985 crimes.

Under the provisions of subsection (i) of 18 USC 4247 The attorney General should have placed Phelps in the custody of the Secretary of the Department of Health and Human Services (DHHS) for the implementation of the provisions of the federal mental health laws.

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[5] And that diagnosis became the diagnosis that future psychiatrists merely rubber stamped without making their own independent evaluations.

[6] The purpose of the insanity laws is to give absolution and forgiveness for criminal wrongdoing and not hold the crimes against the person. (Matter of Com, 1979, 407 A2d 617; US v Denny-Schaffer, 10C1993, 2 F3d 999)

[7] 28 CFR 551.101 (those committed under 18 USC 4243 or 18 USC 4246 will be treated as convicted prisoners.