Hubbart v. Superior Court of Santa Clara County

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On January 21, 1999, the California Supreme Court addressed the constitutionality of California's Sexually Violent Predator Act (SVPA), which was passed in 1995.[1] This act established civil commitment procedures for an individual nearing the end of a prison sentence who was deemed a "sexually violent predator."[2] Affected individuals challenged the constitutionality of the act. In the case of *Hubbart v. Superior Court of Santa Clara County*, a unanimous California Supreme Court held that the civil commitment of individuals under this statute did not violate the federal or state constitutions.

Background of California's SVPA

In California, the penalty for repeat sexual offenders who commit crimes by "force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person" is 25 years to life imprisonment.[3] In response to concerns regarding the risk of such individuals reoffending on release, the California Legislature passed the Sexually Violent Predator Act, which took effect on January 1, 1996.

Under the SVPA, a "sexually violent predator" is defined as "a person who has been convicted of a sexually violent offense against two or more victims for which he or she received a determinate sentence and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior." According to the SVPA, a diagnosed mental disorder can include any "congenital or acquired condition affecting the emotional or volitional capacity that predisposes the person to the commission of criminal sexual acts in a degree constituting the person a menace to the health and safety of others." The phrase "danger to the health and safety of others" does not require evidence of a recent overt act during the period of the offender's incarceration.

The SVPA directs the California Department of Corrections to identify and screen individuals currently serving sentences who may qualify as "sexually violent predators" no less than six months prior to their eligibility for release from prison. Individuals so identified are referred for comprehensive evaluations to be conducted by two psychiatrists or psychologists employed by the Department of Mental Health. If the evaluators agree that the offender is "likely to engage in acts of sexual violence in the absence of appropriate treatment and custody," the case is referred to the appropriate county counsel for review. If the county counsel agrees with the assessment, a petition for commitment is submitted to the superior court judge for adjudication.

The state must then prove beyond a reasonable doubt that the offender is a sexually violent predator under the definition of the SVPA. Individuals who are deemed to be sexually violent predators are committed for two years to a Department of Mental Health locked facility with the opportunity for an annual review hearing. At such a hearing, the state must continue to show that the offender remains a "sexually violent predator" utilizing the "beyond-reasonable-doubt" standard. If the court accepts the

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offer of proof, the offender is remanded to continued confinement and treatment.

The SVPA also directs that "a person who is committed under this article shall be provided with programming by the State Department of Mental Health which shall afford the person with treatment for his or her diagnosed mental disorder." The statute does not require that the offender be deemed amenable to treatment or willing to participate in treatment.

Case Background

Christopher Evans Hubbart terrorized young women in the 1970s and 1980s.[4] After breaking into a home, Mr. Hubbart threatened his victim, tied her hands together, and placed a pillowcase over her head. He raped, sodomized, and otherwise inflicted battery on his victims.[5] His criminal behavior earned him the name "Pillowcase Rapist." Despite periods of incarceration and involuntary hospitalizations at Atascadero State Hospital under the now-defunct Mentally Disordered Sex Offender statute, Mr. Hubbart continued to reoffend when released into the community. Twenty-four rape convictions resulted in a total of 14 years in custody.

On January 2, 1996, shortly before Hubbart's release from prison, the district attorney of Santa Clara County filed a petition under California's recently passed SVPA. Mr. Hubbart met the criteria of a sexually violent predator as he had been previously convicted of two sexually violent offenses and was determined by two Department of Mental Health psychologists to be "mentally disordered" and dangerous. The evaluators diagnosed Mr. Hubbart as suffering from an Axis I disorder, paraphilia, not otherwise specified, and an Axis II disorder, personality disorder, not otherwise specified, with antisocial traits. Both experts agreed that Mr. Hubbart was likely to commit additional sexually violent crimes if released to the community.

Hubbart demurred to the commitment petition on the grounds that the SVPA violated the due process, equal protection, and *ex post facto* clauses of the United States and California Constitutions. The trial court overruled the demurrer, and the Court of Appeals denied Hubbart's petition for a writ of prohibition. Hubbart petitioned the California Supreme Court for review. The petition was granted, and a review was conducted subsequent to the United States Supreme Court's finding that a similar Kansas statute passed constitutional muster.[6]

Hubbart's due process challenge involved three arguments. First, involuntary commitment must be limited to persons suffering from a "mental illness." In contrast, the term "mental disorder" in the SVPA was overly broad and included commitment of individuals characterized primarily by an inability to control sexually violent behavior. Second, a commitment that was dependent on a prediction of future dangerousness was based only on the "mere likelihood" that a similar offense would be committed "at some unspecified time in the future." Third, the SVPA failed to guarantee treatment that would provide a "realistic opportunity to be cured."

Hubbart claimed that the SVPA also violated the equal protection clauses of the federal and state constitutions. He contended that sexually violent predators are similar to other mentally disordered persons released from prison who are subject to commitment under California's Mentally Disordered Offender Law or other state civil commitment statutes. Hubbart argued that the SVPA allowed commitment of an individual who is merely "likely" to commit a violent sex offense, whereas other civil commitment statutes required proof of "substantial danger" or "demonstrated danger" for commitment.

Hubbart's third claim was that the SVPA violated the *ex post facto* clauses of the federal and state constitutions by postponing his release from confinement and, thereby, altering the consequences of his criminal behavior after the fact.

California Supreme Court Holds SVPA Is Constitutional

The California Court reviewed Hubbart's petition taking into account the United States Supreme Court ruling in *Kansas v. Hendricks*.[6] Like Hubbart, Hendricks was civilly committed at the end of a prison term under the Kansas SVPA. When the Kansas Supreme Court held that the statute violated Hendricks' due process rights, *certiorari* was granted by the United States Supreme Court, which addressed many of the same constitutional challenges raised by Hubbart. The U.S. Supreme Court held the Kansas SVPA to be constitutional.

With respect to Hubbart's due process challenge that the use in the SVPA of the term "mental disorder" instead of "mental illness" led to overinclusiveness, the California Supreme Court cited the *Hen-*

dricks decision. The Kansas statute uses the terms "mental abnormality" and "personality disorder" rather than "mental illness." The U.S. Supreme Court noted that the phrase "mental illness" has no "talismanic significance" for purposes of determining the sufficiency of a civil commitment procedure. The California Supreme Court concluded that while the term "mental disorder" differed from the term "mental abnormality" as used in the Kansas statute, "these differences in labeling are purely semantical."

Hubbart also had claimed that on the basis of the United States Supreme Court's decision in *Foucha v. Louisiana*,[7] a diagnosis of antisocial personality disorder could never be used as a basis of civil commitment. The California Court rejected this argument, opining that the Supreme Court had not rejected the use of the term "personality disorder" and had concluded that Foucha's due process rights had been violated because Louisiana had confined him "without proving that he was either mentally ill or dangerous."

Finally, the California Supreme Court also rejected Hubbart's argument that his due process rights had been violated because the SVPA depended on unproven and unwarranted predictions of future dangerousness. The court found that the SVPA does specifically require a person to have a present mental disorder that makes him likely to engage in future sexually violent criminal behavior. The court upheld the statute's use of prior dangerous behavior as a measure that can establish both present mental impairment and the likelihood of future dangerousness. Responding to Hubbart's claim that his due process was violated given the lack of a statutory guarantee of treatment, the Court (citing *Hendricks*) declared that "there is no broad constitutional right to treatment for persons involuntarily confined as dangerous and mentally impaired, at least where 'no acceptable treatment exist[s].' "

The Court also rejected Hubbart's equal protection argument, concluding that the SVPA requires the diagnosis of a current "mental disorder" combined with present dangerousness, which is consistent with other civil commitment procedures.

Additionally, the Court did not accept Hubbart's claim that the *ex post facto* clauses of the federal and state constitutions were violated by altering the consequences of his criminal behavior after the fact. Speaking to this issue, the Court noted that the legislature had disavowed that the SVPA had any punitive purpose, stating that its intent was to establish civil commitment proceedings to provide treatment to individuals who were unable to control their sexually violent behavior and labeling such offenders "not as criminals, but as sick persons." The Court noted that in *Hendricks*, the United States Supreme Court had also rejected the *ex post facto* argument.

Hubbart had argued that the *Hendricks* decision did not apply to his case because the California SVPA was more punitive and penal than the Kansas statute, was likely to incur longer periods of incarceration, and was less likely to engender meaningful treatment. The California Court dismissed each of these arguments in turn and upheld the relevance of the *Hendricks* decision to the California case.

Commentary

The California Supreme Court's unanimous decision in the Hubbart case relied heavily on the reasoning found in *Hendricks*. Although similarities exist between the Hubbart and Hendricks cases and between the statutes from which they derive, four important differences are worth noting. First, Hubbart claimed an equal protection violation not raised by Hendricks, albeit one that was rejected by the California Court.

Second, the California SVPA requires a conviction prior to commitment, whereas the Kansas statute permits a commitment based either on a conviction or a charge involving a sexually violent offense. Although Hubbart argued otherwise, this requirement appears to afford an increased measure of protection for offenders in California. A mere charge cannot trigger the California statute; a finding of guilt must be present.

Third, the California SVPA requires the commission of at least two specified sexually violent offenses as opposed to a charge or conviction of only one such offense as is the case with the Kansas statute.

Fourth, the California SVPA uses the term "mental disorder" rather than "mental abnormality or personality disorder," as utilized by the Kansas statute. The California legislature's thinking in this matter is hard to deduce. It is not clear that it utilized the term "mental disorder" specifically because this is the term used in the DSM-IV. The California Court dismissed this difference as insignificant, but is it? In a concurring opinion, California Supreme Court Jus-

tice Werdegar cautioned: "To the extent the diagnosis simply places a psychiatric label on a particular character structure or a generalized propensity to do ill, *Foucha*'s warnings assume more immediate constitutional significance." In our view, the ultimate significance of this nomenclature's use will be determined by how broadly future courts apply "psychiatric labels" to potentially dangerous individuals for the purpose of protecting society.

References

1. Hubbart v. Superior Court, 969 P.2d 584 (Cal. 1999)
2. Cal. Welf. & Inst. Code 6600–6609.3 (West 1995)
3. Cal. Pen. Code 261(a)(2), 262(a)(1), 264.1, 288(b)(1), 289(a) (West 1988)
4. Bessette JM: In pursuit of criminal justice. The Pubic Interest. Fall 1997, pp 61–72
5. Hubbart v. Superior Court, 58 Cal. Rptr.2d 268, 276 (1997)
6. Kansas v. Hendricks, 117 S. Ct. 2072 (1997)
7. Foucha v. Louisiana, 112 S. Ct. 1780 (1992)