

**IN THE SUPREME COURT OF FLORIDA**

**RONALD MOREL**  
**Petitioner,**

**Case No. SC10-2293**

**2<sup>nd</sup> DCA Case No. 2D09-2096**  
**L.T. No. 09-CA 091**

**v.**

**GEORGE SHELDON, ETC.**

**Respondent,**

**RONALD MOREL,**  
**Petitioner,**

**Case No. SC11-105**

**L.T. CACE02-007799**

**v.**

**MICHAEL JOSEPH STAZ,**  
**STATE ATTORNEY, ETC.**

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**PETITIONER'S SUPPLEMENTAL INITIAL BRIEF**

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## **SUPPLEMENTAL INITIAL BRIEF**

### **ISSUE ONE**

#### **I. The denial of treatment to Morel because of his pretrial detainee status violates both the Equal Protection and the Due Process clause of the Constitution.**

Ronald Morel and all other pre-trial detainees are excluded from Phases II through IV of the sex offender treatment program at the Florida Civil Commitment Center.<sup>1</sup> Pre-trial detainees can never be considered for discharge because only residents who have completed all four phases of the treatment program may be considered for discharge. This disparate treatment between residents who are committed detainees and those who are pre-trial detainees creates an equal protection issue and constitutes a violation of due process. A civil commitment is a “massive curtailment of liberty.” *Humphrey v. Cady*, 405 U.S. 504, 509 (1972). Civil commitment involves a deprivation of liberty and thus due process guarantees must be provided. *In Re Beverly*, 342 So. 2d 481 (Fla. 1977).

Ronald Morel is a resident and pre-trial detainee of the Florida Civil Commitment Center (FCCC) located in DeSoto County, Florida. The FCCC is run by GEO Group, Inc., pursuant to a contract with the Department of Children and

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<sup>1</sup> Petitioner is unable to cite to the transcript of the proceedings below or the record because he does not have a copy of the transcript or record as of yet. As soon as the transcript and record is available, Petitioner will file an amended petition with citations to the record.

Families. A “resident” of the FCCC is “a person who is either detained at or committed to the facility under provisions of chapter 394, part V, Florida Statutes.” The statute was originally entitled the *Jimmy Ryce Involuntary Civil Commitment For Sexually Violent Predators’ Treatment and Care Act*. *Tanguay v. State*, 880 So. 2d 533, 535 (Fla. 2004). At issue in this case is the disparity in treatment between the two classes of residents at the FCCC – those residents who are “detained” versus those who are “committed.” Neither term is defined by the Jimmy Ryce Act. However, definitions are found in the contract between the Department of Children and Families and GEO Group’s predecessor, Liberty Behavioral Health Corporation. The two terms are defined in the contract, as follows:

Committed – means any person civilly committed to the custody of the department pursuant to the provisions of the Act.

Detainee – means any person in the department’s custody for whom a judge has determined that probable cause exists to believe that such person is a sexually violent predator and has directed that the person be taken into custody, but who has not yet been formally committed to the custody of the department for treatment.<sup>2</sup>

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<sup>2</sup> Rather than having detainees go to trial, the State and Defense attorneys have begun a practice of self-commitment. These self-committed residents give up their right to a jury trial and enter into an agreement

At the time of evidentiary hearing, there were 668 residents at the FCCC, of whom 162 were detained and 506 were committed. As mentioned herein above, Ronald Morel is one of the detained residents, who has not been committed. Detainees and committed residents are treated the same way by the FCCC in nearly all aspects of daily living. Residents eat together, room together, work together, participate in recreation together, and attend programs together. Robin Wilson, Clinical Director for the GEO Group, has testified that “segregating the residents goes against the spirit of our facility.” In fact, the contract between GEO and the Department treats all residents the same way for purposes of funding. Per Tim Budz, GEO receives \$100.63 per day for all residents, whether they are detained or committed, whether they are participating in treatment or not.

The legislative intent of the Jimmy Ryce Act is “to create a civil commitment procedure for the long-term care and treatment of sexually violent predators.” § 394.910, Fla. Stat. (2010). Under its contract with the Department, GEO promises the following:

[GEO] shall fully implement all programs for FCCC residents which shall include a comprehensive sexual offender treatment program ...

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with the Department that is approved by the court. The FCCC classifies “self-committed” residents as “committed” residents.

[GEO Contract, page 11]

The Resident Handbook states that: “The mission of Florida Civil Commitment Center is to provide comprehensive and effective sexual offender treatment services in a safe and secure environment for residents, staff and community.” Robin Wilson Clinical Director for the GEO Group, has testified that the residents are “there to be treated so they can go home.” [Wilson, paraphrased] The Sex Offender Treatment Program (hereinafter “SOTP”) at the FCCC consists of four phases. The Phases are:

Phase I: PREPARATION FOR CHANGE: Moral Recognition Therapy (MRT); Treatment Readiness For You (TRY); Thinking For Change (T4C); and other Criminogenic Risk Reduction Strategies

Phase II: AWARENESS: Disclosure and Discovery

Phase III: HEALTHY ALTERNATIVE BEHAVIORS: Development and Consolidation

Phase IV: MAINTENANCE AND COMPREHENSIVE DISCHARGE PLANNING

In order to be considered for discharge from the FCCC, residents must have satisfactorily completed Phases I through IV of the SOTP (also referred to as the Comprehensive Treatment Program). After completing all four phases of the



treatment program, the FCCC may advise the court that the resident has reached “Maximum Therapeutic Benefit.” Per Suzanne Kline, the parties refer to this as getting “the Golden Ticket.” “It is quite unlikely that even a sufficiently motivated participant would be able to complete the SOTP [Comprehensive Treatment Program] in less than five years.” [GEO Contract, p. 82]<sup>3</sup>

Detainees may partially participate in Phase I of the SOTP but are excluded from Phases II, III, and IV. Therefore, detainees will never be able to reach “Maximum Therapeutic Benefit” and be considered for discharge by the FCCC because the FCCC’s policies prevent them from fully participating in the SOTP. Additionally, the FCCC also prohibits outsiders from providing any sex offender treatment to residents. Thus, detainees housed at the FCCC have no opportunity whatsoever to “cure” the mental illness that resulted in their detention.

The Jimmy Ryce Act provides two avenues for release for *committed* residents. Under §394.920 the committed resident may file a petition for discharge at any time, and under §394.918 the committed resident receives annual reviews by the court to determine “whether there is probable cause to believe the person’s condition has so changed that it is safe for the person to be at large and that the person will not engage in acts of sexual violence if discharged.” §394.918(3). The

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<sup>3</sup> Estimated time frames for a resident to complete the phases are: Phase I – 15-18 months; Phase II - 18-24 months; Phase III – 18-24 months; Phase IV – 6-9 months. [Morel Exhibit 2, GEO Contract, pp. 82-91]

Jimmy Ryce Act does not provide any avenues for release from the FCCC for *detained* residents other than prevailing at their civil commitment trial.<sup>4</sup>

The only way a detained resident will ever leave the FCCC is by court action – either through his appeal of the underlying offense or by a jury verdict in his civil commitment trial. When a detained resident is released from the FCCC, he will not have received treatment for the “mental abnormality or personality disorder” that precipitated his initial confinement – regardless of how long he was detained. §394.912(10), Fla. Stat.

In the past, detainees were given access to all phases of the SOTP. That practice was stopped in 2005 when GEO’s predecessor, the Liberty Group, decided to close entry to SOTP to new detainees. The stated rationale for this decision was that:

The current level of clinical staffing is nominally adequate to serve 150 treatment participants. As of 1/1/04, there were 164 residents participating in [treatment], and that number is climbing steadily. In order to maintain a bona fide [treatment] program, the staff:resident ratio must be reduced. It is highly unlikely that the ratio reduction will be accomplished through additional staff. Therefore, the number of residents in the [treatment] program must be reduced.

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<sup>4</sup> Detainees do not have annual reviews and they do not have the right to petition for discharge. §§394.918 and 394.920.

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Restriction of [SOTP] participation to committed individuals will delay the need to expand the clinical staff dedicated to the [SOTP] function by at least one year.

[Morel Exhibit 5]

Some detainees that were already in the SOTP were allowed to continue with the program. Per Tim Budz and Suzanne Kline, when GEO took over the SOTP from Liberty, there were 54 or 55 detained residents who were participating in the SOTP. There are currently 11 or 12 detainees in the SOTP. They advise that all the rest have been released. GEO Group continued Liberty's policy of denying treatment to detained residents, but made exceptions for those already in the program, which Liberty had allowed to continue.

The Department supports GEO Group's policy of denying sex offender treatment to detainees. While Liberty Group's rationale for excluding detainees from treatment was purely money-driven, the Department and GEO have espoused different justifications for exclusion.

We had some debate about permitting residents who are detained to fully participate in treatment during 2006.

After consultation with our Treatment Advisory Board, Public Defenders and Dr. Harrison it was decided that the existing policy to not allow detainees into Phase Two was a sound one. This is primarily due to the fact that Phase Two requires full disclosure. Full disclosure is not in the best interest of the resident prior to the SVP trial as it is well known that the Prosecutor will use the disclosure against the resident in the trial. In addition, the bind that it creates for the individual (successfully participate in treatment by disclosing weighed against disclosure and become committed) is a terrible choice leading to not fully disclosing. It also creates a bind for the therapist who knows that their work may negatively impact their client in court.<sup>5</sup>

Tim Budz, the FCCC Facility Administrator, elaborated and stated that the primary reason detainees are not allowed to participate in the SOTP is because they need to fully disclose their sexual history. Because everything they say in therapy can be used against them at their commitment trial, detainees are “less motivated to make full disclosure.” The full disclosure requirements of the latter stages of

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<sup>5</sup> Dr. Kline has testified that if detainees are permitted to participate in the SOTP the integrity of the program will be compromised because the program is tailored to sexually violent predators and detainees have not been determined to be sexually violent predators. However, the statute dictates that only sexually violent predators are to be committed to the FCCC, so it is unclear what additional diagnoses Dr. Kline would need to label the detainees as such.

Kline has also testified that detained residents decrease the morale of the other members of the group. However, Tim Budz of the GEO Group has testified that segregating detainees from committed residents within the groups would ameliorate and correct the contamination problem.

treatment place detainees in a bind of having to confess to their crimes before their civil commitment trials and risk that their confessions will be used against them<sup>6</sup>.

As mentioned herein above, when GEO took over the FCCC, there were 54 or 55 detainees fully participating in the SOTP. At the time of trial, 12 detained residents were fully participating in the SOTP. GEO is therefore in the unique position of being able to ascertain whether the full disclosure aspect of the SOTP is an impediment to detainees who choose to participate; whether the participation of detainees in the SOTP undermines the integrity of the program; and what is the recidivism rate of detainees who participated in the SOTP. However, neither GEO nor the Department has provided concrete answers to these important questions.

Tim Budz, Facility Administrator at the FCCC, answered “I don’t know” to each question when asked (1) whether detainees who participated in the SOTP were more inclined to be deceptive than committed residents; (2) whether detainees were more inclined to disrupt the program than committed residents; and (3) whether detainees had experienced higher recidivism rates than committed residents. While the reasons for denying detainees full access to the SOTP may sound reasonable and logical, in reality, the justifications given by the Department

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<sup>6</sup> Budz has also testified that beginning treatment and dropping out leads to higher recidivism, but retreated somewhat from that position and stated that he was referring to other treatment programs, not the SOTP implemented at the FCCC.

and GEO are based on unsubstantiated theories -- psychological “what if” scenarios unsupported by research or even casual observation.

Equal protection allows classifications that are rationally related to a legitimate state interest. *City of Cleburne, Texas v. Cleburne Living Center*, 473 U.S. 432 (1985); *Duncan v. Moore*, 754 So. 2d 708, 712 (Fla. 2000)<sup>7</sup>. While the Department has put forth numerous state interests it seeks to protect by treating detained residents differently than committed residents, the Department has failed to show a rational relationship between the classification it created and the state interest. Cleburne, 473 U.S. at 446 (the State may not rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational.) If there was a rational basis for their classification, the detained residents grandfathered into the program by Liberty would surely have been removed by GEO.

An unintended by-product of the Jimmy Ryce Act is the length of time detainees remain in the FCCC. See *State v. Goode*, 830 So. 2d 817 (Fla. 2002). “These individuals are in limbo, having finished any time served for criminal convictions and not yet committed under the Ryce Act.” *Kearney v. Barker*, 834 So. 2d 347, 348 (Fla. 4th DCA 2003) (finding the position of pre-trial Ryce

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<sup>7</sup> “The Equal Protection Clause of the Fourteenth Amendment commands that no state shall deny to any person within its jurisdiction the equal protection of the laws, which is essentially a direction that all persons similarly situated should be treated alike.” *Cleburne*, 473 U.S. 430.

detainees most similar to pre-trial criminal detainees). A person classified as a sexually violent predator may be involuntarily committed to the FCCC “for treatment until the person’s mental abnormality or personality disorder has changed and the person is safe to be at large.” *Tanguay v. State*, 880 So. 2d at 536. The intent of the legislature was to provide for the “long term care and treatment of sexually violent predators.” §394.910, Fla. Stat. (2010). All residents at the FCCC have been deemed by professionals on a DCF screening committee to be sexually violent predators. Detained residents who have not had a trial and have not self-committed are detained when they are determined through the screening process to be sexually violent predators and a judge finds probable cause for that determination.

Due process requires that the state provide civilly committed persons with access to mental health treatment that gives them a realistic opportunity to be cured or improve the mental condition for which they were confined. *See Sharp v. Weston*, 233 F. 3d 1166 (9<sup>th</sup> Cir. 2000); *Turay v. Seling*, 108 F. Supp. 2d 1148 (W.D. Wash. 2000) (sexually violent predators are entitled under the Due Process Clause to have “access to mental health treatment that gives them a realistic opportunity to be cured or to improve the mental condition for which they were confined.”); *see generally Youngberg v. Romeo*, 457 U.S. 307, 324 (1982) (person institutionalized for severe mental retardation with no possibility of rehabilitation

has a constitutionally protected interest in reasonable care and safety, reasonably nonrestrictive confinement conditions and such training as may be required for these interests).

The Department's policy of excluding detained residents from treatment violates both the equal protection clause and the due process clause of the Constitution.

## **ISSUE TWO**

**Whether Morel's allegations in his petition regarding the waiting list to obtain treatment, even if eligible for treatment, are accurate and, if not, explain.**

Completion of the SOTP without any delays takes five years, at a minimum. The FCCC has admitted that delays up to 20 weeks between classes or phases are typical. As a result, Mr. Morel alleges a defect in the Sex Offender Treatment Program operated by the FCCC.

Although there are over 700 residents currently confined to FCCC, Respondent has limited the number of participants in treatment and the remaining residents who have been committed are placed on a long waiting list. The waiting list is further proof that Respondent is providing inadequate treatment to the resident population and that many on the waiting list are being unconstitutionally delayed in receiving treatment and cannot secure their release from indefinite detention.



Petition, p. 6, ¶22. The Department of Children and Families denies that there are “waiting lists” for treatment. The FCCC denies that there are “waiting lists” *per se*, but admits that residents transitioning from one class to another may encounter delays of up to 15 to 20 weeks or 4 to 5 months. However, the FCCC claims delays generally occur only during Phase I of treatment when residents must progress as a group. Tim Budz has testified that 393 residents participate in the SOTP. Mr. Budz has also testified that each resident needs to be assessed by numerous psychologists when transitioning between certain phases or classes. However, he was unable to testify as to how long the assessments can take – either weeks or months. These assessments cause further delays in the completion of the program. Mr. Budz has acknowledged that one resident waited a year for a class, but testified that it had been a paperwork error and indicated that the responsible therapist had been fired. Mr. Morel had 170 questionnaires completed by residents of the FCCC. A cursory review of these documents revealed that the majority of residents participating in the SOTP at the FCCC are under the perception that their treatment has been delayed at numerous times between classes through no fault of their own.

If a resident were to move through the program efficiently and with no delays whatsoever, it would take him a minimum of five years to reach maximum

therapeutic benefit. However, completion of the program is frequently delayed, up to 20 weeks, when the resident completes one class or phase and is ready to move into another class or phase.

### **ISSUE THREE**

#### **Morel's commitment is illegal because of the inordinate amount of time (eight years) since his release from his prison sentence**

Morel's detention for eight years at the FCCC, without affording him any opportunity to cure the mental defect that caused his confinement, is illegal. Morel completed his criminal sentence in April of 2002 and has been civilly detained for almost 9 years. This raises "due process concerns of commitment beyond imprisonment." Goode, 830 So. 2d at 826

The Jimmy Ryce Act contains strict time frames which mandate that the court "shall conduct a trial" to determine if the person is a sexually violent predator within 30 days of the probable cause determination. §394.916. The 30-day time limit may only be extended up to 120 days upon a showing of good cause and no prejudice to the detainee. Id. Strict adherence to the 30-day time limit is "virtually the only safeguard and limitation" put on the State's continued confinement of detainees under the Ryce Act. Goode, 830 So. 2d at 826. Because a defendant in a

civil commitment proceeding may require more than 30 days to prepare a defense, District Courts have allowed detainees to waive the 30-day time limit. *Curry v. State*, 880 So. 2d 751 (2nd DCA 2004); *Williams v. State*, 870 So. 2d 922 (3rd DCA 2004); *Kobel v. State*, 757 So. 2d 556 (4th DCA 2000). However, a detainee's initial waiver should not allow detention to continue indefinitely without a trial. Such indefinite detention violates principles of due process. *Goode*, 830 So. 2d 817; *Curry*, 880 So. 2d at 755.

In this case, the delay in Mr. Morel's trial is so extraordinary that prejudice is presumed. The civil detention of Mr. Morel for more than eight years without a commitment trial is a violation of his due process rights. *See Doggett v. U.S.*, 505 U.S. 647, 655-58 (1992) (recognizing in context of a sixth amendment claim that an "extraordinary" eight year delay presumptively compromises the reliability of a trial); *U.S. v. Mohawk*, 20 F. 3d 1480, 1485 (9th Cir. 1994) (noting that a ten year delay is "extreme by any reckoning").

The system's failure to ensure Morel a prompt resolution of his case has violated his due process rights. In addition, denying him treatment as discussed above has compounded this due process violation. Again, Mr. Morel's detention at the FCCC for more than eight years, with no opportunity to receive treatment for the mental condition that caused his detention, is illegal.

## ISSUE FOUR

**The reason why the trial in this case has not taken place for eight years and whether Morel has had counsel throughout that time, and if not, the reasons for lack of counsel.**

Mr. Morel has had counsel since April 29, 2002, six days after the court found probable cause to detain him as a sexually violent predator. Mr. Morel's attorney never demanded his right to speedy trial or otherwise advised the State or the court that he was ready for trial.

A petition seeking the involuntary civil commitment of Ronald Morel was filed on April 23, 2002, and an *ex parte* probable cause order was signed by Judge Robert Carney on the same day. At a hearing on April 29, 2002, the public defender was appointed to represent Morel. Morel signed a waiver of speedy trial after his attorney told him that it was his first Jimmy Ryce case. At all times, from April 29, 2002, to present, Mr. Morel has been represented by counsel. His first attorney was a public defender, Mr. McCue, who represented him from April 2002 through July 2002. His second attorney was Jaime Cassidy who represented him from July 2002 through April 2005. During Ms. Cassidy's representation, the parties engaged in discovery. Morel filed a Nelson Motion against Ms. Cassidy. Ms. Cassidy was replaced by another public defender, Dohn Williams, who represented Morel from April 2005 through June 2005. His case was set for trial in

July 2005. Mr. Williams filed a Motion to Continue Trial, which was subsequently withdrawn. Jeanine Cohen, a private attorney, was hired by Morel and substituted in for Attorney Williams by Order dated June 29, 2005. Ms. Cohen represented Morel from June 2005 through March 2011, when undersigned counsel was appointed.

Although discovery was completed in 2005, when the case was placed on the trial docket, the case was continued on Mr. Morel's motion while Attorney Cohen tried to set aside the underlying conviction on a Rule 3.850 motion. When that failed, Attorney Cohen and State Attorney Kristin Kanner began settlement discussions. The attorneys worked toward settlement from 2008 through 2010, but talks ultimately stalled in January, 2011. It was the hope of the parties that some sort of self-commitment agreement could be reached, to no avail.

In Broward County, the primary reason given for cases languishing on the docket is the unavailability of expert witnesses for the defense. The State claims that it has always been ready for trial. Mr. Morel's former attorney, Jeanine Cohen, was not ready for trial.

### **CONCLUSION**

WHEREFORE, based on the foregoing reasons and authorities, Petitioner, Ronald Morel, respectfully requests that this Honorable Court reverse

the summary denial of his Petition for Writ of Habeas Corpus and order his immediate release from the Florida Civil Commitment Center pending his civil commitment trial. In the event that Petitioner is not released from his eight (8) year detention, Petitioner respectfully requests immediate access to the next and subsequent phases of the Sexual Offender Treatment Program at the Florida Civil Commitment Center.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished via email to: Susan A. Maher, Chief Assistant Attorney General, The Capitol, PL-01, Tallahassee, FL 32399 at [susan.maher@myfloridalegal.com](mailto:susan.maher@myfloridalegal.com); Kristin Kanner, Assistant State Attorney, Broward County Courthouse, 201 S.E. 6<sup>th</sup> Street, Suite 675, Fort Lauderdale, FL 33301 at [kkanner@sao17.state.fl.us](mailto:kkanner@sao17.state.fl.us) this 15th day of August, 2011.

**CERTIFICATE OF COMPLIANCE**

**I HEREBY CERTIFY** that this brief complies with the font requirements of Florida Rule of Appellate Procedure Rule 9.210(a)(2).

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