

ORAL ARGUMENT – 04/10/02
CAMPBELL V. STATE OF TEXAS
01-1185

LAWYER: The petitioner intends to argue orally on the issues number 1 and issues number 3. As to issue number 1, which we believe is the main issue in this case, it is petitioner's position that art. 46.03 of the Code of Criminal Procedure and the Texas Health and Safety Code, which is referred to as the mental health code, can be read together and harmonized together without having to claim that certain provisions of the mental health code are inappropriate when you're talking about individuals found not guilty by reason of insanity. We believe that it can be and it has been for decades in this state.

The only reported opinion that claims otherwise other than this case that's as before the court right now came in the case of Lopez v. State of Texas. And that case was a case that had all kind of problems, but it was decided on the issue that they denied a jury trial to Lopez. Therefore, the statement there that the mental health code did not apply was different, and it was not followed by any of the other reported opinions throughout the state. Weller(?) v. State was a case that was decided strictly on point with the issue in this case, and that is, once someone is found not guilty by reason of insanity and they are up for a recommittment to the mental hospital, that you have to follow the mental health code. And one of the provisions of the mental health code was is that not at the time that a motion by whomever it is filed is filed to have them recommitted. But before the hearing takes place there has to be on file two certificates of medical examination that say that the individual has been examined and that he meets the criteria for involuntary commitment.

HANKINSON: In a nutshell is your position that Weller is the interpretation of the statute that should be applied, and in fact harmonizes 46.03 with the mental health code?

LAWYER: That's correct.

HANKINSON: Well if that's the case, aren't we not imposing an additional condition precedent upon the court's obligation to hold a hearing beyond what 46.03 requires if we adopt that interpretation? Section 46.03 requires, it's mandatory, that the court hold a hearing if in fact a letter is received from the director of the facility with the recommendation in it that must be considered by the court and then if the court on its own motion or on the motion of the district or county attorney, the hearing is mandatory under the statute.

LAWYER: If you want to recommit the individual, yes, the hearing is mandatory.

HANKINSON: The hearing is mandatory. The court doesn't have any choice under those circumstances whether on its own motion - if we have the certificate from the director of the facility and the court decides or the district or county attorney moves for a hearing, then the hearing is mandatory.

LAWYER: A hearing of some sort of is mandatory.

HANKINSON: Aren't we then if we look to the mental health code to also require two certificates before holding the hearing in fact creating a conflict with 46.03 because we've imposed an additional condition precedent before the court can actually hold the hearing?

LAWYER: I believe when you read the statute and the statute says the hearing has to be conducted in accordance to the mental health code, that that's exactly what it's saying.

HANKINSON: But it does require a hearing. And if you don't have the two certificates under the mental health code, then the court doesn't hold a hearing. So as a result we would not have the hearing. And we've elevated the certificate to the level of being a condition precedent. And that's my question to you about doesn't this create a conflict then because it interferes with the mandatory obligation the court actually hold the hearing by imposing an additional condition precedent before the hearing ever takes place.

LAWYER: If the court does not intend to recommit the individual, they don't have to hold a hearing. If they want to recommit the individual, then they have to do it in accordance with the mental health code, and the mental health code says the extra condition precedent. I don't see that as a conflict.

BAKER: I didn't understand. You just said if the court doesn't want to recommit, then the court doesn't have to hold a hearing.

LAWYER: If the court lets the year pass and doesn't do anything, there is no authority to keep holding the individual.

HANKINSON: But the _____ requires the hearing _____. It says upon receipt of such certificate or upon the expiration of the commitment order the court shall order the discharge or on the motion hold a hearing. So it does require action on the part of the court and if there is a motion it does require a hearing as opposed to just automatically discharging.

LAWYER: What you just read tells me that they can either discharge him or if they don't want to discharge that they have to have a hearing.

HANKINSON: They must have a hearing. Period. They can't then just decide to not have a hearing and recommit. They have to have a hearing. But in fact if you impose the requirement of a certificate and you've got an additional condition precedent before the hearing is held.

LAWYER: If that's the way you read it, then that's exactly the way I read it. I believe that 46.02 when you go to the first hearing that you have where you don't have to have the application, you still have to have the certificate.

HANKINSON: When you look at the language of 574.002, it refers to an application for court ordered mental health services. This is not an initial application. This person has already been committed. And it talks about it having to be styled in terms of a proposed patient. This is not a proposed patient. This person is already and is currently a patient. And in fact it talks about the fact

that already in patient mental health services are being provided under 46.02 for at least _____ today. So it makes no reference to 46.03. So then the next question becomes with respect to the form of the application, whether or not by its very terms it would even apply under the mental health code.

LAWYER: If you look at 46.03(d)(2) it says a hearing conducted under 46.03 is a civil proceeding to be conducted by the TC in the same manner as a hearing on application. To me that's what that is saying: the two certificates have to be there.

HANKINSON: But that's the actual conducting of the hearing itself. We're dealing with something that is a prerequisite to having a hearing. Because if the court does not have these applications, then it can't go forward with the hearing under the mental health code. I just see some conflicts with the statute. I understand you say that we don't have a conflict. I see some conflicts and I'm trying to get them reconciled and asking you to help me.

LAWYER: Obviously the 14th CA saw the same conflicts. All of the other opinions that are before this court, they've always followed the mental health code that says that you have to that requirement. If you try to determine what the intent of the legislature was, look to the last action of the legislature when it now says that a person in Nathan Campbell's position can be transferred to the civil court for civil commitment. Are they saying then that if...

HANKINSON: But that's on the TC's discretion. The TC can choose to maintain jurisdiction over the _____.

LAWYER: But does that mean then that the individual that gets transferred gets transferred with different rules applying to him, different rights that he can expect just because the court made the decision to keep his case as opposed to transferring.

HANKINSON: It seems to me that if you look at 574, it's dealing with applications for court ordered mental health services in terms of initiating those services.

LAWYER: There's no doubt the mental health code was written for the purpose of trying to cover everybody. Then the Code of Criminal Procedure came and said, use the mental health code to apply this to that...

HANKINSON: But someone who has been acquitted by reason of insanity of a violent crime stands in a very different position than someone who the state is trying to get civilly committed for mental health services in terms of the starting point of the procedure. So the question is where does the mental health code kick in? It seems to me you have to look to the language of the statute for that. For both statutes.

LAWYER: I agree with you.

HANKINSON: Because in the criminal proceeding the defendant has in fact taken the burden upon the burden of showing that he or she was not guilty by reason of insanity. So in fact we already have a finding by a judge and jury on the insanity defense.

LAWYER: You mean he's automatically committed, which is not what happens in the civil side. But after that they say all the hearings to recommit him thereafter have to be in accordance with the mental health code. I don't see a conflict with that by saying that to follow the guidelines of the mental health code you have to have two doctors that say he meets the criteria. I guess the court's position is then that no doctors have to say that as far as certificates go.

HANKINSON: Well then you have a different set of standards that apply during the course of the hearing in terms of proving that the person should remain committed. Because there are additional requirements in the mental health code for that. Right?

LAWYER: Right. You would have orally testimony that complies with those certificates.

ENOCH: This hasn't been briefed and it's really not an issue that's pertinent to the CA. But in this case the criminal DC retained jurisdiction.

LAWYER: It had to.

ENOCH: Well it has the option of transferring it to a civil court, or it can retain jurisdiction in which event if it retains jurisdiction then it proceeds under this code of criminal procedure. The jurisdictional statement that you raised and wasn't disagreed with by the state just says well we have a dispute at the CA because we've got judges who disagree with each other. And you say there's conflict among the CA's. But our court is limited to only civil cases.

LAWYER: