

Summary of SC89470, *State ex rel. State of Missouri v. The Honorable Paul Parkinson, Judge, Macon County*

Original proceeding arising from the Macon County circuit court, Judge Paul Parkinson

Attorneys: The state was represented by State Solicitor James R. Layton of the attorney general's office in Jefferson City and Andrew Dickson of the attorney general's office in Kansas City, (573) 751-3321; and Richard Closser was represented by Emmett D. Queener of the public defender's office in Columbia, (573) 882-9855, and Amy Clay of the public defender's office in Clayton, (314) 615-4778.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: The attorney general seeks to prevent a circuit court from releasing from custody a man his office sought to commit, in a civil action, as an alleged sexually violent predator. In a unanimous decision written by Chief Justice Laura Denvir Stith, the Supreme Court of Missouri issues its writ (order) prohibiting the circuit court from dismissing the case. The fact that a psychologist who was not yet licensed in Missouri wrote a report about the man at the end of his confinement in the department of corrections was mere error that did not deprive the circuit court of jurisdiction over the man or prejudice the man. Judge Michael A. Wolff writes a concurring opinion expressing concern as to whether the sexually violent predator statutes in practice fulfill their design of protecting against over-inclusion in the category of sexually violent predators.

Facts: Richard Closser was convicted of sexual abuse in 1990 and of child molestation and sexual misconduct in June 1997. His sentence for the latter convictions was suspended, and he was placed on probation for five years. His probation was revoked in 2001 for failure to make adequate progress in required sexual offender treatment. He served the rest of his sentence in prison, where he refused to participate in the state's sex offender treatment program. In December 2004, within 180 days of when Closser was scheduled to be released from prison, the attorney general filed a petition alleging that Closser met the definition of a sexually violent predator and, therefore, seeking Closser's civil commitment as a sexually violent predator. In February 2005, the circuit court found probable cause to believe that Closser was a sexually violent predator and set a date for a jury trial as to whether Closser should be committed as a sexually violent predator. The trial was continued six times before May 2008, when defense counsel for the first time moved to dismiss the petition, alleging the Missouri license of the psychologist who prepared Closser's end-of-confinement report for the department of corrections was not granted until a few months after he wrote that report, although he was licensed in Texas at the time the report was prepared. The circuit court determined this error deprived it of

jurisdiction to proceed with the case. The attorney general seeks this Court's writ prohibiting the circuit court from dismissing the petition.

WRIT MADE ABSOLUTE.

Court en banc holds: (1) Section 632.483, RSMo Supp. 2003, indirectly requires that the psychologist who prepares an initial end-of-confinement report be licensed in Missouri. Error in complying with that requirement, however, is just that: mere error. It has no effect on the court's subject matter jurisdiction to decide whether the offender subject to the petition for civil commitment is a sexually violent predator, nor does it affect the court's personal jurisdiction over the offender. The circuit court here erred in holding otherwise.

(2) The licensing error did not prejudice Closser. A report prepared by a Missouri-licensed psychologist is not required to be attached to the petition and is not a condition precedent to the court determining the issues raised in the petition. Closser does not suggest that the psychologist was not otherwise qualified to render an opinion. The psychologist was licensed in Texas at the time of his report and received his Missouri license just a few months later. Closser failed to raise the licensing error in a timely manner before the probable cause hearing. After the court found there probable cause to believe that Closser was a sexually violent predator, he underwent a new psychological evaluation that found that he meets the definition of a sexually violent predator. This new evaluation supports further proceedings and has supplanted the end-of-confinement report.

Concurring opinion by Judge Wolff: The author concurs with the principal opinion but writes separately to question whether the statutes, in practice, function as they are designed: to protect against over-inclusion in the category of sexually violent predator. He notes that the initial review of the multidisciplinary team – designed to safeguard individual rights against overzealous experts – did not find that Closser met the definition of a sexually violent predator. He further expresses concern about whether the state engaged in “expert shopping” when it chose to use a psychologist not licensed in Missouri to prepare the end-of-confinement report.