

No. 17-2198-K368

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IN THE 368TH

JUDICIAL DISTRICT COURT OF

BENJAMIN BUSH

WILLIAMSON COUNTY, TEXAS

PETITION FOR WRIT OF HABEAS CORPUS FOR PERSON
ORDERED INTO HOSPITALIZATION BUT LEFT IN JAIL

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Applicant in the above-styled and numbered cause, by and through his undersigned counsel who is his Petitioner, and pursuant to Articles 4.01, 11.05 and 11.09 of the Texas Code of Criminal Procedure, Article I §§13 and 19, Article V, §§15 & 16 of the Texas Constitution, as well as the Eighth and Fourteenth Amendment to the United States Constitution, moves the Court to grant a writ of habeas corpus ordering the Sheriff of Williamson County to transport **BENJAMIN BUSH** to the appropriate state health facility and ordering the facility to receive him for treatment. In support, Applicant shows the following:

I.

APPLICANT IS UNDER RESTRAINT

BENJAMIN BUSH is charged with aggravated assault under Cause No. **17-2198-K368**. He is illegally restrained in his liberty by virtue of his confinement in the Williamson County Jail despite having been found incompetent to stand trial. His restraint is excessive, oppressive, and detrimental to his mental health. This petition for

writ of habeas corpus is the appropriate remedy. Applicant's confinement is illegal for the following reasons.

II.

APPLICANT'S CONFINEMENT IS ILLEGAL

Pursuant to chapter 46B of the Code of Criminal Procedure, this Court found Applicant incompetent to stand trial. Upon this determination, the Court had two options: release the defendant on bond, or commit him up to a mental health facility for a period not to exceed 120 days for examination and treatment with the goal of restoration of competency.¹ Tex. Code Crim. Pro. art. 46B.071 & 46B.073(b). A mental health facility includes out-patient programs and community centers, and is broadly defined as almost anything operated by the Texas Department of State Health Services,² "a federal agency, a political subdivision, or any person," or an "identifiable part of a general hospital in which diagnosis, treatment, and care for persons with mental illness is provided." Tex. Health & Safety Code §571.003 (12). Under 46B.073(d), however, the Court is limited to "committing the defendant to a mental health facility or residential care facility determined to be appropriate by the local mental health authority[.]"

¹ In cases of mental retardation, the Court may commit the person to a residential care facility operated by the department or a community center that provides homes and 24-hour services directed toward enhancing the health, welfare, and development of persons with mental retardation. Tex. Health & Safety Code §591.003 (18). This provision does not apply to the instant writ application.

² The department was formerly the Texas Department of Mental Health and Mental Retardation (TDMHMR), created in 1965 until the Legislature in 2003 reorganized twelve health and human services into five agencies, one of which oversees services for the mentally disabled. Tex. H.B. 2292 (78th Legislature, Regular Session, 2003). This agency is the Department of State Health Services (DSHS).

The commitment process is governed by the Code of Criminal Procedure and the Texas Administrative Code. Under Article 46B.075 of the Code of Criminal Procedure, the Court ordering commitment for restoration is required to “place the defendant in the custody of the sheriff for transportation to the facility ... in which the defendant is to receive treatment for purposes of competency restoration.” Tex. Code Crim. Pro. art. 46B.075. Once the sheriff transports the defendant to this facility, the state mental health facility³ “shall admit” the person for treatment. Tex. Admin. Code, tit. 25, part 1, chapter 412, Section 412.177. The facility’s ministerial duty to admit the person delivered for restoration to competency completes the commitment process.

This process is not being followed. The Williamson County Sheriff has not transported the person to the appropriate state hospital. The appropriate facility has not admitted the person. The process is contrary to the rights of a person determined to be incompetent to stand trial.

Persons accused of crime but found incompetent to stand trial retain liberty interests in the conditions and circumstances of their confinement, interests protected by the 14th Amendment’s Due Process Clause. *See Bell v. Wolfish*, 441 U.S. 520 (1979); *See Jackson v. Indiana*, 406 U.S. 715 (1971)(commitment of an incompetent defendant in a state hospital implicates due process protections); *Vitek v. Jones*, 445 U.S. 480, 493-494

³ A state mental health facility is “any state hospital or a state center with an inpatient psychiatric component that is operated by [then] TDMHMR.” Tex. Admin. Code, tit. 25, part 1, chapter 412, Section 412.153(37).

(1980)(involuntary transfer of a state prisoner to a mental hospital implicates liberty interests protected by the due process clause); *O'Connor v. Donaldson*, 422 U.S. 563, 580 (1975)(“involuntary commitment to a mental hospital, like involuntary confinement of an individual for any reason, is a deprivation of liberty which the State cannot accomplish without due process of law”); *Oregon Advocacy Cir. v. Mink*, 322 F.3d 1101, 1120 (9th Cir.2003)(“Pretial detainees, whether or not they have been declared unfit to proceed, have not been convicted of any crime. Therefore, constitutional questions regarding the conditions and circumstances of their confinement are properly addressed under the due process clause of the Fourteenth Amendment.”).

In determining whether a substantive right protected by the Due Process Clause has been violated, courts are required to consider the constitutionality of the detention in light of its purpose, and to ask whether the detention is based on “permissible” regulatory goals of the government, and if it is, whether the detention is excessive in relation to those goals. *Salerno*, 481 U.S. at 747; *Bell*, 441 U.S. at 539 (a pretial detainee’s due process rights are violated when the restrictions on their liberty are not reasonably related to legitimate government objectives). The seminal, unanimous Supreme Court case on the rights of persons found unfit to proceed made clear that “[a]t the least, due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed.” *Jackson*, 406 U.S. at 738. Moreover, “holding incapacitated criminal defendants in jail for weeks or months violates their due

process rights because the nature and duration of their incarceration bear no reasonable relation to the evaluative and restorative purposes for which courts commit those individuals.” *Mink*, 322 F.3d at 1122. The defendant’s due process rights are in continuous violation under the circumstances of this case.

Applicant was found to be incompetent to stand trial on **December 5, 2017** due to his mental disability, but has remained in jail. This Court has previously ordered the Sheriff to transport Applicant to the North Texas State Hospital (Vernon Campus), 4730 College Drive, Vernon, Texas 76385 [(940) 552-9900; Fax (940) 553-2500]. He has not been transported or accepted into the hospital.

The penological purpose for keeping the Applicant in jail expired at the time he was found incompetent to stand trial. According to Texas law, the only reason to continue to confine a person after being found incompetent to stand trial is for “examination and treatment toward the specific objective of attaining competency to stand trial.” Tex. Code of Crim. Pro. art. 46B.073(b) The Code of Criminal Procedure mandates that a court choose between only two settings when ordering a person to receive competency restoration treatment: it can commit the defendant to a mental health facility or release the defendant to an outpatient treatment restoration program. Tex. Code of Crim. Pro. art. 46B.071-46B.073.

The Texas Supreme Court and the Fifth Circuit have both indicated that if the purpose of the commitment is to secure treatment, and treatment is not provided, then the

nature of the commitment bears no reasonable relation to its purpose and the state violates that person's right to due process. *Wyatt v. Aderholt*, 503 F.2d 1305, 1312 (5th Cir.1974); *TXMHMR v. Petty*, 848 S.W.2d 680, 685 (Tex.1992) (the purpose of involuntary commitment is to provide appropriate therapy,... [w]hen the State negligently fails to pursue the goals, as here, liability may attach"), *reversed on other grounds, University of Texas Med. Branch v. York*, 871 S.W.2d. 175 (Tex. 1994). The United States Supreme Court in *Jackson*, found that a person found incompetent to stand trial could not be held in a state hospital for more than reasonable period of time necessary to determine whether there was a substantial probability that he would attain that capacity in the foreseeable future. *Jackson*, 406 U.S. at 738-39. If due process requires that the commitment of an incompetent defendant in a state hospital be only for a reasonable period of time to determine whether they have attained competency, then confinement of an incompetent defendant in a county jail after it has been determined that competency restoration services are required and are not being provided necessarily violates due process as well.

THEREFORE, it is respectfully requested that this Court conduct a hearing as soon as practicable, take judicial notice of its prior proceedings and findings of incompetency, and upon conclusion thereof issue a writ of habeas corpus ordering Applicant's immediate release, or alternatively, immediately ordering the Applicant's transfer to a mental health facility or outpatient treatment program that can provide competency restoration treatment, in accordance with law.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Petitioner prays that this Court issue a writ of habeas corpus and order **BENJAMIN BUSH** to be released or transported to the North Texas State Hospital, and any other such relief that law and equity affords.

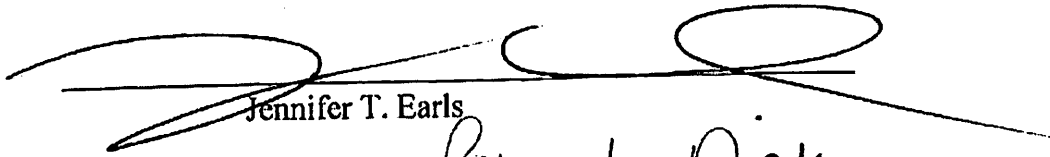
So moved and prayed that the writ of habeas corpus be issued. Executed this day, January 29, 2018.


/s/ Jennifer T. Earls
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Petitioner for Albert Martinez

STATE OF TEXAS §
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COUNTY OF WILLIAMSON §

BEFORE ME, the undersigned authority, on this day personally appeared Jennifer T. Earls, Applicant, who being by me duly sworn, upon oath states that the allegations of fact contained in the foregoing *Application for Writ of Habeas Corpus for Person Ordered into Hospitalization but Left in Jail* are true and correct.

Signed this day, January 29, 2018.


Jennifer T. Earls


Brenda Dick
Notary Public in and for the State of Texas

