

Civil Commitment:
The New Life Imprisonment Sentence

by

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I. Introduction

On July 27, 2006, then President George W. Bush signed into law the Adam Walsh Child Protection and Safety Act of 2006. This bill was the most comprehensive bill to address the issue of sex offenses against children. One of the key components of the bill was the ability for the Federal Government to civilly commit¹ any individual in their legal custody² they believe to be sexually dangerous. This is accomplished by proving by clear and convincing evidence three requirements. First, a person must have engaged or attempted to engage in sexually violent conduct or child molestation. Second, the person must suffer from a mental illness or abnormality. Last, the person must lack volition control due to the mental illness or abnormality. If the government meets its burden of proof in court during a hearing, the individual is then committed to the custody of the Attorney General for an indefinite period of confinement. This effectively becomes a life sentence after the completion of a term of imprisonment. The result is that many people including myself have been incarcerated in prison for an additional 10 years without committing another crime and beyond what the sentencing court imposed for the crime. With the Federal Bureau of Prisons (BOP) in control of the civil commitment scheme, everything is punitive even though Congress intended the Adam Walsh Act to be civil.³

II. Sources of Stress

There are many sources of stress for me as a person who is civilly committed but incarcerated in prison. Here are some of the sources of stress that I deal with on a daily basis: 1) Being incarcerated past my criminal release date

1 Codified at 18 U.S.C. 4248

2 U.S. v. Joshua, 607 F.3d 379, 382 (4th 2010)

3 U.S. v. Comstock, 627 F.3d 513 (4th 2010)

(11-22-2006) for almost 10 years, 2) being locked down in a unit close to 23 hours a day because I have to be separated from the general prison population serving a criminal sentence, 3) being around the same men in the living unit 24 hours a day with very little ways of getting away from them, 4) being treated like a prisoner and disrespected by prison staff all the time because of my status, 5) not having some of the other privileges that our state civil committee counterparts have in other state civil commitment programs. This list could go on and on but these are probably the top five major sources of stress that I deal with daily and have dealt with for 10 years now.

III. Ways of Coping

I have several ways of coping with above listed sources of stress. Even though these methods are limited due to the fact that I am locked down in a unit for close to 23 hours a day, I still find time and ways to practice the methods of stress relief that I have learned. There are several methods of stress relief that I use to deal with the stress that has been created by the unique circumstances of my imprisonment. First, I like to go outside to the recreation yard everyday and strength train on the weight pile. In addition, I like to walk 3-4 times a week, use an elliptical 3 times a week, or engaging in organized sports activities. Second, I like to take a nice hot shower to help relax the muscles and relieve the tension in my body. Last, I like to go to my room and listen to instrumental music, classical music, or guided meditation. Sometimes I also enjoy finding a good book to read in the library and getting lost in the story of the book. These are the major ways that I cope with the stress in this prison living unit.

IV. Healthcare

The BOP healthcare is very slow and leaves much to be desired. The process for being seen begins with what is referred to as sick-call. At sick-

call, the nurse will determine if the problem requires the immediate attention of the physician's assistant or the doctor. If there is not immediate threat of a medical issue, then that person will be placed on call-out which can be anywhere from 1-2 weeks up to as much as two months. Meanwhile, the person just has to sit and wait and suffer with whatever issue he is dealing with. For me personally, I had to wait up to 2 months after reporting to sick call before I was able to see my PA. I am currently waiting to see a specialist for dermatology and that will take up to 9 months. Then to top it all off as a civilian committed for mental health issues, I am not allowed to participate in Obamacare or access Medicaid and have them take care of my medical needs. The BOP charges prisoners \$2.00 per sick call visit and civilly committed individuals such as myself are considered prisoners and because I cannot access Medicaid, I have to pay the \$2.00 co-pay out of my own pocket.

V. Causes of Violence & Ways to Reduce Violence

I have seen several altercations in the unit I live in that have resulted in violence. One person was hit in the head with a lock by his cellmate when that person walked into his room and caught his cellmate breaking into his locker and stealing his coffee. Other incidents including individuals pressuring others for sexual favors or sexual contact. Those with serious mental health issues not being placed on the correct medication to help keep them calm. Those individuals are a serious threat to everyone in the unit including myself and yet the staff refuses to segregate those people. The staff is completely aware of these issues but refuse to deal with them in an appropriate manner. I also believe that being in close proximity to the same people for 24 hours a day without being able to get out of the unit away from the others for a few hours causes a significant increase in stress and tension which leads to violent encounters. Last I believe the deliberate mistreatment by the prison staff

because of my status also causes violent encounters.

I believe the ways to reduce the violence are: 1) Create a separate facility for those civilly committed under the Adam Walsh Act like myself that would allow for more freedom of movement; 2) Separate the seriously mentally ill from the non-seriously mentally ill civilly committed residents; 3) Have the BOP staff stop treating civilly committed residents like myself as prisoners when they are not serving criminal sentences; 4) Create more jobs, education opportunities, and vocational training opportunities for civilly committed residents; 5) Have in place a funded sex offender treatment program for civilly committed persons that will focus heavily on treatment for sexually deviant behaviors and that will prepare individuals to manage their behavior and be productive citizens upon release. I believe that with these appropriate changes it would be possible to reduce the violence in the living unit because residents will be constructively occupied trying to better themselves.

VI. Material Conditions

From personal experience I know that the conditions of my confinement are no different from the general prison population and in some cases are worse than those of the general prison population. When I was serving a criminal sentence I had more freedom of movement and more choices in jobs, education classes, and vocational training. As a civilly committed persons there is supposed to be a distinction between those serving a criminal sentence and those civilly committed for mental health reasons. The only distinction is that I am separated from the general prison population. However, I still have plenty of interaction with criminals serving a sentence even though I am "separated" from the rest of the criminal population. In some respects my conditions of confinement are worse than criminals serving sentences because I have less job opportunities, less educational opportunities, less vocational training, and less movement. I still

punished like a prisoner and am still subject to the same BOP rules and regulations that I was subjected to when I was serving a criminal sentence. I have been told by staff that as long as I am in the custody of the BOP, I will always be treated as a prisoner. However, in my case because of my status as a civilly committed individual I am treated worse than a criminal serving a sentence.

VII. Education

The facility I am at offers a good selection of education programs for prisoners serving a criminal sentence. Because I am not serving a criminal sentence anymore, I do not have the opportunity to engage in the education programs the prison offers. For example, I am not allowed to take the electrical or horticulture vocational training classes the prison offers. I am not allowed to take the carpentry vocational classes. All because I have to be separated from the general prison population and there are not enough staff members to provide supervision for myself and others like me to participate in these available classes. The only program that is available to me is what is called Oasis. The Oasis program is a collection of courses that is designed to prepare individuals working in the business world. These courses are available through the use of a computer lab which I do have access to plus there is an education computer in the living unit that is available to me as well. Any other courses or classes I want to take I must take from outside colleges that offer courses through correspondence. This costs money and I have been paying for such courses to better myself and my chances of success on the street once I am released. In addition, I am not eligible for the pell grant because of my criminal conviction which also limits how many classes I can take at one time.

VIII. Employment

As a civilly committed person and separated from the general prison population my opportunities for jobs is limited. In the institution, there are several different types of jobs available to the general prison population. They are

as follows: 1) Unit Orderly, 2) Food Service Worker, 3) Laundry Worker, 4) Commissary Worker, 5) Captain's Orderly, 6) Lieutenant's Orderly, 7) Compound Orderly, 8) Education Worker, 9) Recreation Worker, 10) Facilities Worker 11) Chaplain's Orderly, 12) Medical Orderly, 13) R&D Orderly, 14) Special Housing Unit Orderly, 15) Inmate Companion Program, 16) Suicide Watch Companion Program, 17) Mental Health Companion Program, 18) Unicor.

In comparison, I have access to the following job areas: 1) Unit Orderly, 2) Food Service Line Worker, 3) Chapel Orderly, 4) Education Worker, 5) Inmate Companion Program, 6) Unicor with limited spots. I have no access to the other available job areas on this prison compound. That is only 33% of the jobs that are available to the general population that I have access to. To make matters worse, the BOP staff has constantly and consistently blocked any attempt to create more jobs for me and others like me who are civilly committed. They simply do not care about us or about what happens to us.

IX. Better ways to Operate Civil Commitment

I believe there are better ways to operate civil commitment in the Federal system. First, civil commitment must be given its own budget separate from the Bureau of Prisons budget or anything else. This will allow for the appropriate amenities and for the creation of an appropriate Civil Commitment Treatment Program to help those who have been civilly committed like me to truly learn to control our behavior so that we can re-enter society and be law abiding and productive citizens. In addition, a separate budget would allow for the hiring of the appropriate treatment staff who would not be correctional officers first but would be truly treatment oriented and not punishment and corrections oriented. Second, the civil commitment program should not be in the hands of the Federal Bureau of Prisons but in the hands of the Department of Health and Human Services. The BOP does not have the knowledge to deal with civilians who are not under a

criminal sentence but under an order of commitment for mental health reasons. The BOP only knows about punishment and corrections and cannot truly help nor do they truly care about those who are not serving a criminal sentence. Finally, civil commitment should have a separate facility for people who are not serving a criminal sentence. This would allow for more freedom as those who are not serving sentences would not have to be segregated from a general prison population. In addition, this would allow for more jobs for those who are civilly committed in that they would not have to share the job areas with criminals serving a sentence.

X. Conclusion

In conclusion, the current Federal Civil Commitment scheme does not and cannot work while the BOP and BOP employees have control of the situation. There must be a clear distinction between criminal confinement and civil confinement and between prisoners and civil committees. My criminal sentence has gone from a 47 month term of imprisonment with a release date of November 22, 2006, to a life imprisonment with no release date at all under a civil law. My life sentence is based on what I might do in the future not what I did in the past or am doing in the present. As long as this is allowed to continue the problems addressed in this report will continue and will gradually worsen over time. This whole situation sounds like a real life "Minority Report" movie doesn't it?