In The

Supreme Court of Virginia

RECORD NO. 121562

MICHAEL PAUGH,

Appellant,

v.

HENRICO AREA MENTAL HEALTH AND DEVELOPMENTAL SERVICES,

Appellee.

REPLY BRIEF OF APPELLANT

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TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES ii

THE APPEAL, NOT THE UNDERLYING PETITION
FOR INVOLUNTARY COMMITMENT, WAS DISMISSED 1

THERE IS ACTUAL INJURY OR HARM 1

MR. PAUGH REQUESTED SPECIFIC RELIEF 4

CONCLUSION 4

CERTIFICATE 6

TABLE OF AUTHORITIES

PAGE(S)

CASES

Hankins v. Town of Virginia Beach,
182 Va. 642 (1944) 2

Powell v. McCormack,
395 U.S. 486 (1969).....2

CONSTITUTIONAL PROVISION

U.S. CONST. amend. II 2, 3

STATUTES

Va. Code § 37.2-814.....3

Va. Code § 37.2-819.....3

Va. Code § 37.2-821.....3

RULE

Va. Sup. Ct. R. 5:29 1

TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF VIRGINIA:

NOW COMES the Appellant, Michael Paugh, pursuant to Rule 5:29 of the Rules of the Supreme Court of Virginia and as his Reply Brief herein states as follows:

Mr. Paugh does not agree with the Appellee regarding the Appellee's Statement of Facts. Mr. Paugh also disagrees that there is no injury or harm to him by the Circuit Court's decision. Finally, Mr. Paugh disagrees that he did not ask for specific relief.

THE APPEAL, NOT THE UNDERLYING PETITION FOR INVOLUNTARY COMMITMENT, WAS DISMISSED

The Circuit Court denied Mr. Paugh's appeal and did not dismiss the underlying petition. (App. 29, lines 20-24; App. 53). Therefore, the underlying petition remains granted.

THERE IS ACTUAL INJURY OR HARM

Appellee contends that because there was no order continuing treatment at the de novo hearing in the Circuit Court, that there is neither injury nor harm to Mr. Paugh thus making the matter moot. Mr. Paugh disagrees.

There are two aspects to consider when it is alleged a matter is moot: "when the issues presented are no longer 'live'

or the parties lack a legally cognizable interest in the outcome." Powell v. McCormack, 395 U.S. 486 (1969). The duty of this honorable Court, "as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect." Hankins v. Town of Virginia Beach, 182 Va. 642 (1944). In Hankins, this honorable Court found there was no actual controversy existing. Mr. Paugh's case is distinguishable from Hankins because there remains an actual controversy due to constitutional implications. Mr. Paugh's second amendment right, or the loss thereof, to purchase, possess or transport a firearm is very much a live issue.

Appellee suggests that there is no actual controversy because Mr. Paugh was not involuntarily committed to inpatient treatment on May 18, 2012 by the circuit court. Mr. Paugh's rights were still infringed by not dismissing the underlying petition and therefore the actual controversy remains.

The second amendment to the Constitution of the United States provides "…the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. Virginia law

mandates that the clerk's office send the order involuntarily committing a person to the Central Criminal Records Exchange (CCRE), where that person's name will be entered into the database as being banned from purchasing, transporting or possessing a firearm. Va. Code § 37.2-819. This is a legal infringement of a person's second amendment right to bear arms. If a person is not involuntarily committed at the general district court level then they do not lose their second amendment rights. The same can be said at the circuit court level.

If a person, on a de novo appeal to the Circuit Court, is found to not meet the criteria, then his second amendment rights, technically, were never lost.[1] However, in the case at bar, the Circuit Court ruled that the appeal was denied, and did not dismiss the underlying petition. This is a clear violation of his second amendment rights as the Virginia Code requires his information be sent to the CCRE to ensure he cannot purchase,

[1] Virginia Code § 37.2-821 mandates that a full commitment hearing be held in accordance with Virginia Code §§ 37.2-814 through 37.2-819 using the de novo standard as of the date of the hearing in the circuit court.

possess or transport a firearm. Therefore an injury or harm that can be rectified by this honorable Court exists.

MR. PAUGH REQUESTED SPECIFIC RELIEF

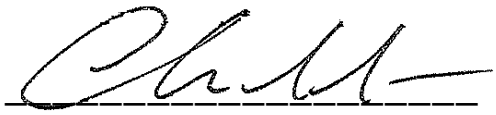
In his Brief of Appellant filed January 22, 2013 in this honorable Court's Clerk's Office, Mr. Paugh requested this honorable Court to reverse the Circuit Court order and dismiss the underlying petition and rule that only facts and not hearsay be admitted through the preadmission screening. (Brief of Appellant, pgs. 14-15).

CONCLUSION

For the reasons stated above, Mr. Paugh respectfully requests that this honorable Court find this matter is not moot. Mr. Paugh also renews his requests that this honorable Court reverse the circuit court order and dismiss the underlying petition as Mr. Paugh did not meet the criteria for involuntary admission for inpatient treatment at the time of the de novo hearing. Mr. Paugh also respectfully requests that this honorable Court rule that only facts stated in the Pre-Admission Screening Report and

not hearsay (not exempt by any hearsay exception) be allowed to be entered as evidence in commitment hearings.

MICHAEL PAUGH



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CERTIFICATE

The undersigned certifies as follows:

(1) The name and address of appellant are: Michael Paugh, 12113 Ridgefield Parkway, Henrico, Virginia 23233.

(2) The name, address, and telephone number of counsel for appellant are: Charles R. Samuels (VSB # 65899), 4908 Monument Avenue, Ste. 100, Richmond, Virginia 23230. Telephone number 804-342-1995, Fax number 804-342-1998. E-mail address: cr@samuelslawfirm.com.

(3) The name and address of appellee are: Henrico Area Mental Health and Developmental Services, 10299 Woodman Road, Glen Allen, Virginia 23060. Telephone number 804-727-8484, fax number 804-727-8660.

(4) The name, address, and telephone number of counsel for Appellee are: Paul C. Galanides, Esq., (VSB # 45358), Assistant Commonwealth's Attorney, Office of the Commonwealth Attorney for Henrico County, P.O. Box 27032, Richmond, Virginia 23273. Telephone number

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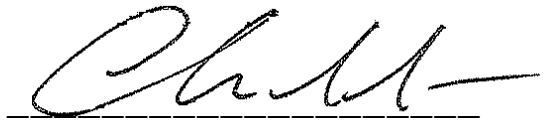
(5) Counsel for appellant has been appointed.

(6) This Reply Brief complies with Rules 5:6, 5:26(h) and 5:29 of the Rules of the Supreme Court of Virginia.

(7) Fifteen bound copies of the Reply Brief of Appellant, with one electronic copy on CD, have been hand-filed with the Clerk of the Supreme Court on this 28th day of February, 2013.

(8) Three bound copies of the Reply Brief of Appellant, with one electronic copy on CD, have been served via U.S. Mail, postage prepaid, to opposing counsel at the above mentioned address, on this 28th day of February, 2013.

(9) The total number of words, excluding the cover page, table of contents, table of authorities, and certificate in this brief is 743.



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Charles R. Samuels