

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

NO. 94-661

1995 TERM

FEBRUARY SESSION

WILLIAM KNOWLES

v.

MICHAEL CUNNINGHAM, WARDEN

RULE 7 APPEAL OF DENIAL OF PETITION FOR WRIT OF HABEAS CORPUS

BRIEF OF PETITIONER, WILLIAM KNOWLES

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QUESTIONS PRESENTED

1. Are a prisoner's federal and state rights against self-incrimination violated when, as a condition of parole, he is required to admit the conduct for which he was found guilty when throughout his trial and incarceration he has maintained his innocence. Petition for Writ, Notice of Appeal at 6-7.

STATEMENT OF FACTS AND STATEMENT OF THE CASE

William Knowles was convicted by jury on two counts of aggravated felonious sexual assault and sentenced on March 13, 1987 to 7 to 15 years on the first count, and to 3 to 15 years on the second, to be served consecutively. In March 1993, Mr. Knowles was denied parole from the first to the second sentence for failure to complete the New Hampshire State Prison's Sexual Offender Program (SOP). He was told at that time that he would not again be considered for parole until he completed the SOP. Mr. Knowles completed the minimum portion of his first sentence on May 4, 1993 as a model prisoner. In April 1994, Mr. Knowles's request for a parole hearing was again denied and for the same reason.

Throughout his trial and incarceration, Mr. Knowles has maintained his innocence. Admission into the SOP requires that he admit the conduct for which he was found guilty. Thus he has claimed that admittance into the SOP, without which parole will not be granted requires him to give up his constitutional rights against self-incrimination.

Mr. Knowles filed a Petition for Writ of Habeas Corpus in the Merrimack County Superior Court, which was denied by Order dated August 19, 1994.

SUMMARY OF ARGUMENT

The petitioner has a constitutional liberty interest in parole, and retains his rights against self-incrimination. Rights against self-incrimination attach when there is the possibility of future criminal prosecution, which exists in this case. It is neither helpful nor constitutional for a person who maintains his innocence to "admit" guilt. Finally, the New Hampshire Constitution provides more protection than federal law in this area, and this Court has previously recognized the constitutional importance of forced, yet avowedly therapeutic, admissions.

ARGUMENT

Because Mr. Knowles was found guilty of a sex crime, he may not be paroled until he completes the Prison's Sexual Offender Program (SOP). The Program requires that an applicant for admission "admits offending which is consistent with victim reports." Admission Criteria for SOP, Notice of Appeal at 13. An inmate who maintains his innocence will not be admitted into the program. Without completing the program, Mr. Knowles will serve the maximum time for which he was sentenced -- 30 years. By completing the program, Mr. Knowles will be eligible for parole 10 years from the date of his conviction -- a 20 year difference.

At the outset, it should be noted that the petitioner has a constitutional liberty interest in parole. Baker v. Cunningham, 128 N.H. 374, 378 (1986) (citing Woodman v. Perrin, 125 N.H. 545, 548 (1984)); Bussiere v. Cunningham, 132 N.H. 747, 751 (1990).

The petitioner also retains his rights against self-incrimination.

"A defendant does not lose [his right against self-incrimination] by reason of his conviction of a crime; notwithstanding that a defendant is imprisoned . . . at the time he makes incriminating statements, if those statements are compelled they are inadmissible in a subsequent trial for a crime other than that for which he has been convicted."

Minnesota v. Murphy, 465 U.S. 420, 436, 104 S. Ct. 1136, 1141-42 (1984). By virtue of the vast difference in time that Mr.

Knowles is eligible to serve, the admission of his guilt is not voluntary; it is compelled for the purposes of Minnesota v. Murphy.

A person's rights against self-incrimination are not violated if there is no threat of criminal prosecution.

"[T]he privilege against self incrimination not only permits a person to refuse to testify against himself at a criminal trial in which he is a defendant, but also privileges him not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings."

Allen v. Illinois, 478 U.S. 364, 368, 106 S. Ct 2988, 2991 (1985) (citations and internal quotations omitted); Hollis v. Smith, 571 F.2d 685, 690 (2nd Cir. NY 1978) (defendant's examination by psychiatrist to determine sentencing did not violate rights against self-incrimination because psychiatrist's interrogation was on subjects presenting no threat of disclosure of prosecutable crimes). See also Russell v. Eaves, 722 F. Supp. 558, 560 (E.D. Mo. 1989) (5th Amendment protects against compelled testimony in any proceeding where answers might incriminate the witness in a future criminal proceeding); State v. Gleason, 576 A.2d 1246, 1251 (Vt. 1990) (defendant required to talk only about issues relating to instant conviction).

In this case, however, Mr. Knowles may face criminal prosecution as a result of making the admissions compelled by the SOP admission criteria. He may, for instance, be subject to

prosecution of perjury. See State v. Imlay, 813 P.2d 979, 985 (Mont. 1991). He may also be forced to forgo an opportunity to reopen his case in the event of a witness recantation, for the presentation of new evidence. id., or for any other lawful purpose.

Even though the Parole Board requires convicted sex offenders to complete the SOP, conditioning acceptance on admitting guilt does not comport with the New Hampshire or federal constitutions. Moreover, in the event that some inmates may be guilty of the crime for which they were convicted yet due to psychological or other reasons feel unable to admit their guilt, the New Hampshire State Prison should provide a program to bring the inmate to the point of the required admission. Most important, even given the procedural protections of the criminal justice system some innocent people are convicted, and it does no good for such a person to "admit" guilt.

The New Hampshire Constitution, Article 15, provides a higher level of protection than the federal constitution, see State v. Lauri, 135 N.H. 438, 444 (1992) (New Hampshire prosecutor must prove a confession is voluntary beyond a reasonable doubt; federal prosecutor held to a standard of preponderance of evidence), and perhaps some other state constitutions. Thus, other jurisdictions' decisions may not provide meaningful guidance.

The Court may want to find guidance in current New Hampshire law on a similar topic. This Court has held that

"the fifth amendment privilege against self-incrimination does not protect against giving evidence relating to civil commitments. So long as those proceedings do not seek to elicit evidence which may result in any criminal prosecution, the privilege is not involved. We also hold that any admissions, information or evidence divulged by the person being examined shall be excluded from any subsequent criminal prosecution or sentencing proceeding. This protects a person's right against self incrimination and promotes open disclosure to examining psychiatrists and psychologists."

In re Field, 120 N.H. 206, 210-211 (1980) (internal citations omitted).

CONCLUSION

Based on the forgoing, the Petitioner requests that

A. Order that a Writ of Habeas Corpus be issued;

B. Order that the Parole Board hold a hearing on Mr. Knowles's parole, and that it not take into account Mr. Knowles's refusal to discuss the crimes charged and his inability therefore to complete the Sexual Offender Program;

C. Order that the Parole Board credit Mr. Knowles for the time he has served since the expiration of his minimum sentence toward the completion of his second sentence.

Respectfully submitted,

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By his Attorney

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REQUEST FOR ORAL ARGUMENT AND CERTIFICATION

Counsel for Mr. Knowles requests that he be allowed 15 minutes for oral argument. Attorney Allen will present the argument.

I hereby certify that a copy of the forgoing brief has been forwarded this date to Sharon Fray-Witzer, Esq., Assistant Attorney General.

Date

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