

Mad or Bad? A Case Study in Extradition for Civil Commitment

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Biography

Terry Thomas has been a Visiting Professor of Criminal Justice Studies at Leeds Metropolitan University since his retirement as Professor in August 2011; he is the author of 'Criminal Records' (2007) Palgrave Macmillan and 'The Registration and Monitoring of Sex Offenders' (2011) Routledge. He spent 12 years as a local authority social worker and senior social worker.

Key Words

Civil commitment; Imprisonment for the public protection; Deprivation of Liberty; Extradition; Preventative Detention.

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Abstract

Civil commitment is a measure used on potentially dangerous sexual offenders in the USA. The commitment in question is to a secure institution and is not based on an offence having been committed nor on the existence of a mental disorder. It requires only the confirmation by professionals of the presence of a sexual dysfunction and an apparent lack of volitional control of that dysfunction. Civil commitment has not been legislated for in the UK but was nonetheless still the recent subject of examination in the London High Court when the court was considering an appeal against extradition to the USA. The applicant was an alleged sexual offender. The Court ruled against the extradition order already agreed by the Home Secretary because of the possible use of civil commitment on the applicant which was ruled incompatible with the European Convention on Human Rights.

Neither Mad nor Bad: A Case Study in extradition for Civil Commitment

Civil commitments are a form of preventative detention, a public protection measure that is only used in the USA. They are seen as a way of dealing with potential sex offenders who have yet to commit a crime but are not experiencing any mental health disorder. In other words neither the criminal justice system nor the mental health system is effectively able to deal with them to prevent them committing a sexual offence. Rigorous critiques of Civil commitments include Rubin (1970), Janus (1994, 2004, 2006, 2009), Janus, Mickelsen, & Sanders (1994) and Failer (2002).

This paper addresses the question of whether people should be extradited when they are likely to be subjected to civil commitment in the destination country, outlining the case of Shawn Eugene Sullivan. Home Secretary Theresa May signed an extradition order on 10th February 2011 allowing Shawn Eugene Sullivan, a US citizen aged 43 to be taken back to the USA to face charges for sexual offending against children. On 20 June 2012 Sullivan successfully appealed against his extradition order. Part of his

appeal was premised on the possibility that Mr Sullivan might eventually have been the subject of a 'civil commitment' and this would be a 'flagrant denial of his rights' under Article 5 of the European Convention on Human Rights (*Sullivan v The Government of the USA and the Secretary of State for the Home Department* [2012] EWHC 1680 (Admin)).

The UK has recognised the problem of the potential sexual offender who has not committed an offence and has no mental health problems. Parliament heard of the case of Graham Seddon a convicted child sex offender who had been recently released from prison, found wandering the streets of Liverpool with crayoning books and coloured pencils looking for children. Neither police nor mental health workers could hold him (O'Hara in Hansard House of Commons Debates 7 July 1997 col 745). The UK subsequently introduced a sex offender register, 'imprisonment for the public protection' and made amendments to UK mental health legislation, but at present has fought shy of introducing civil commitment.

Civil commitments are the device used by many US States in the interests of community protection. Washington State is usually attributed as being the first to have a civil commitment law through their Sexually Violent Predators Act 1990. They are used on sex offenders who are completing their prison sentences but are still considered a risk to the public and the commitment means they can be detained until they are no longer a risk. The constitutional status of civil commitment was ratified by the US Supreme Court in the case of *Kansas v Hendricks* 521 U.S. 346 (1997).

Civil commitments also allow for people living in the community to be detained if there is a past history of sexual offending and other sufficient evidence is available to suggest they are a risk – a current allegation of a crime is not required. There is no requirement for the presence of mental illness. The law in Minnesota – the State that wanted Sullivan returned – requires only that an ill-defined 'sexual dysfunction' should exist.

A case observed by the author in Minnesota shows the Orwellian extremes to which civil commitment can lead. Randy Dean Fox was imprisoned for sexual offences on 5 June 1992 and released back into the community 1 March 2002. From that date he complied with his probation conditions, found a place to live and a job in Minneapolis and had committed no offences; in all respects the model ex-prisoner. What else could he do?

In May 2002 Mr Fox was seen in the street by a police officer who remembered him from ten years earlier and was concerned that he was out on the streets again. The officer secured psychologists reports based on old files, filed a Petition for a civil commitment, and a court order requiring Fox to be arrested and brought before the courts; Fox himself was not spoken to and knew nothing of any of this.

On a Monday afternoon in May 2002 the County of Hennepin District Court convened to hear the case for a civil commitment. Unfortunately the police had been unable to arrest Mr Fox over the preceding weekend so the court was left with the judge and all its law officers (and me in the public gallery) presiding over a court with no defendant; the judge was not very happy. Mr Fox was at work on the other side of town blissfully unaware of the court's sitting.

The following day Fox was arrested and held at the Minnesota Security Hospital in St Peter Minnesota and by October he had been formally committed as a Sexually Dangerous Person.

The Units that hold people who have been civilly committed are neither fully hospitals nor prisons. They are secure but their inmates are not serving judicial sentences as such. Treatment is supposed to be provided but some inmates deny they are ill and some refuse to consent to treatment.

Discharges are rare. The UK High Court dealing with Sullivan's extradition appeal heard that in Minnesota some 600 people had been civilly committed since 1988 and not one had been released. Clearly putting your name to a release decision was a lot more difficult than putting it on a Petition for civil commitment.

The argument in the June 2012 Sullivan extradition case hinged on Article 5.1(e) of the European Convention on Human Rights that requires:

‘no one should be deprived of his liberty save in the following cases, and in accordance with a procedure prescribed by law... [including]... the lawful detention of persons of unsound mind’

Sullivan's initial criminal court hearing would be unlikely to consider ‘civil commitment’ but it remained a possibility further down the line. However ‘unsound mind’ might be defined, it was not covered by the Minnesota laws which required only the existence of the ‘sexual dysfunction’.

The UK High Court considered written reports from Professor Eric Janus of Minnesota (against civil commitment) and Judith L Cole an Assistant Attorney (in favour). The Court's final decision to stop the extradition was based on the ‘flagrant denial of rights’ that would occur. The US authorities must decide to either appeal again, or give an assurance that Mr Sullivan will not be ‘civilly committed’. Needless to say, the British tabloid press have had a field day, complaining about abuse of the Human Rights Act to prevent us getting a ‘paedophile’ out of the country. On the other hand Janus (2009) has demonstrated that such ‘downstream’ approaches as civil commitment intervene too late and too ineffectively to adequately protect children, proposing in their place, a more structured and coordinated Public Health strategy, an approach that in policy terms avoids the madness and badness of approaches that derive their raison d'être from moral panics rather than from a real focus on the needs of children.

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