

1993 WL 818811

Only the Westlaw citation is currently available.
Superior Court of Massachusetts.

John BRUDER

v.

COMMISSIONER of Mental Health

No. 9205277. | March 31, 1993.

Opinion

LENK.

DECISION ON RESPONDENT'S OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS AND OPPOSITION TO MOTION TO VACATE COMMITMENT TO TREATMENT CENTER

*1 Petitioner John Bruder filed a petition pursuant to G.L. c. 248, § 1, *et seq.* seeking his immediate release from the Massachusetts Treatment Center for the Sexually Dangerous to which he is and has been committed under G.L. c. 123A, since July 1983. As reasons therefore, Bruder asserts that he is being subjected to punitive confinement, that he is not receiving any treatment nor being held in the least restrictive available conditions and that a petition for discharge filed by Bruder under c. 123A § 9 three years prior to the instant petition was not reached for hearing.

Subsequently, Bruder filed a Motion to Vacate Commitment From Unlawful and Unconstitutional Restraint claiming violation of his constitutional right to equal protection of the laws in light of the alleged creation, without rational basis, of two classes of sexually dangerous persons in the wake of the repeal in September 1990 of G.L. c. 123A, § 3.

The Respondent Commissioner of Mental Health opposed Bruder's petition for writ of habeas corpus, arguing that it should be dismissed because: (a) Bruder's claims are barred by the doctrine of *res judicata*; (b) this court lacks authority to release Bruder pursuant to a civil habeas corpus petition, and (c) Bruder is not entitled to an annual review of his petition for discharge under G.L. c. 123A, § 9. The Respondent also opposed Bruder's Motion to Vacate Commitment, arguing that it should be dismissed because: (a) Bruder's only avenue of release from the Treatment Center is pursuant to G.L. c. 123A, § 9 and (b) Bruder has not demonstrated a violation of his equal protection rights. The Respondent's Oppositions are, as

counsel acknowledge, each in the nature of a motion to dismiss under M.R.C.P. 12(b)(6) and shall be treated as such. Both parties agreed to waive oral argument on said motions and to submit this matter for decision on the papers filed with the court.

Motions to dismiss for failure to state a claim test the legal sufficiency of a complaint or, here, petition. For the purposes of determining such a motion, the facts alleged in the petition are to be taken as true, as are such inferences as may be drawn from the petition in Petitioner's favor. Dismissal at the pleadings stage is disfavored unless it is clear that no provable set of facts would entitle Petitioner to relief. *See* 6 Mass.Rules (Smith and Zobel) § 12.12. Applying this standard, Respondent's motions to dismiss must be denied.

Respondent contends that the doctrine of *res judicata* requires the dismissal of Bruder's claims because Bruder was a named plaintiff in *Langton v. Johnson*, 928 F.2d 1206 (1st Cir.1991), involving identical parties and allegedly identical causes of action. To the extent that Bruder asserts claims arising from events which postdated the *Langton* trial, however, it cannot be said at this juncture that such claims are identical to those previously litigated. Indeed, the First Circuit noted that the District Court had concluded "that the range of treatments *presently offered* satisfied the requirements of the consent decrees ..." *Langton*, 928 F.2d at 1216. (Emphasis supplied.) Plaintiff alleges *inter alia* that treatment previously offered at the time of trial has been eliminated. Hence, dismissal of such claims on the basis of the doctrine of *res judicata* is unwarranted.

*2 Respondent contends also that Bruder's only avenue of release from the Treatment Center is *via* G.L. c. 123A, § 9 and that this petition must thus be dismissed. However, the Supreme Judicial Court has recently made plain that habeas corpus, and not the G.L. c. 123A, § 9 process, is the correct avenue to challenge conditions of confinement at the Treatment Center. *Petition of Gagnon*, 416 Mass. 775, 778-79 (1994).

Finally, it is not clear to the court at this stage that there is *no* set of facts which plaintiff would be able to prove which would entitle him to relief on the claims he has asserted, including the due process and equal protection claims.

Hence, Respondent's Oppositions, construed as motions to dismiss, are denied and this matter should proceed, as appropriate, for discovery and trial.

