NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JOHN BRANDT,	:	
	:	Civil Action No. 10-1035 (DMC)
Petitioner,	:	
	:	
v.	:	OPINION
	:	
TERESA MCQUAIDE, et al.,	:	
	:	
Respondents.	:	

APPEARANCES:

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CAVANAUGH, District Judge

Petitioner John Brandt, a Krol[2] patient currently confined at Anne Klein Forensic Center in West Trenton, New Jersey, has submitted a petition for a writ of habeas corpus pursuant to 28

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[1] Counsel for Petitioner entered her appearance after the Respondents' Answer had been filed.

[2] See State v. Krol, 68 N.J. 236 (1975) (detailing periodic review procedures for persons found not guilty by reason of insanity and committed for mental health treatment); N.J.S.A. 2C:4-8(b)(3) ("If the court finds that the defendant cannot be released with or without supervision or conditions without posing a danger to the community or to himself, it shall commit the defendant to a mental health facility approved for this purpose by the Commissioner of Human Services to be treated as a person civilly committed.").

U.S.C. § 2254. The respondents are Teresa McQuaide and the Attorney General of the State of New Jersey.

For the reasons stated herein, the Petition must be denied.

I. BACKGROUND

The relevant facts are set forth in the opinion of the Superior Court of New Jersey, Appellate Division.[3]

> The following facts are pertinent to our review. In 2001, two Bergen County indictments were returned against J.B. charging him in Indictment 01-06-1754 for third-degree burglary, N.J.S.A. 2C:18-2a, and third-degree criminal mischief, N.J.S.A. 2C:17-3a(1), and in Indictment 01-06-0156 for fourth-degree criminal trespass, N.J.S.A. 2C:18-3a. The charges arose out of J.B.'s entry into the college dormitory room of his girlfriend and her roommate without their permission. In their presence, he knocked over a bed and threw a television and stereo out of the window. Police officers who later apprehended J.B. saw that he had cut his wrists in an apparent suicide attempt.
>
> J.B. was subsequently diagnosed with bipolar disorder, manic type with psychotic features, and with an antisocial personality disorder. On June 24, 2003, the trial judge found him competent to stand trial on both indictments and not guilty by reason of insanity. ...
>
> ... The judge entered [the proposed order] on June 30, 2003, involuntarily committing J.B. to a psychiatric hospital and placing him on Krol status. ...

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[3] Pursuant to 28 U.S.C. § 2254(e)(1), "In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence."

J.B.'s commitment was continued through periodic review orders issued by the judge on March 19 and June 23, 2004, which we affirmed. I/M/O the Commitment of J.B., No. A-4456-03 (App. Div. February 24, 2005). Thereafter, another judge held periodic Krol hearings and continued J.B.'s commitment. ...

A Krol hearing occurred on April 30 and September 28, 2007. The State's expert and J.B.'s treating psychiatrist, Mahmood Ghahramani, M.D., testified that J.B. has a long history of violent and assaultive behavior and non-compliance with medication. He is also an escape risk.[Fn2] The doctor noted that J.B. had been admitted to Ancora Psychiatric Hospital, but was transferred to the Ann Klein Forensic Center (Ann Klein) after assaulting his then treating psychiatrist. J.B. did not assume responsibility for the assault and blamed the doctor.

> [FN2] J.B. was once placed at the less restrictive Greystone Park and attempted to escape.

Dr. Ghahramani opined that J.B. has bipolar disorder, which is a lifelong problem that can go under remission with antipsychotic medication. J.B. also has an antisocial personality disorder with antisocial features and borderline qualities. Because J.B. was then on medication, the doctor opined that he was currently "under fair remission other than some mild symptoms of bipolar disorder[,] which is ... pressured speech, and grandiosity still is there but his overall behavior is not overtly psychotic or manic." However, the doctor emphasized that if J.B. is under stress or stops taking his medication, he is "a very high risk for decompensation and acting out behavior, violent ... [and] more impulsive." The doctor also testified that:

> I agree that Axis II [anti-social personality disorder] is the more serious problem. If [J.B.] actually was just, had the bipolar disorder, and had a good insight into his problem, would take his medication ... and [J.B.] has been quite resistant in the past to continue taking his medication and he has a pile of lawsuits against the doctors that they gave him medication, and so that also makes kind of high risk of his compliance with the treatment.

...

> That Axis II treatment is very difficult, very difficult, would be very long term. I don't know if just the problem of Axis II he had to remain in [a] psychiatric hospital for treatment of his Axis II problem but in general, at the present time [J.B.] needs the structure of the hospital besides the treatment and to safeguard the risk of violent behavior.

Dr. Ghahramani concluded that J.B.'s diagnosis, along with his psychiatric history, risk of violent behavior, dangerous acting out, and non-compliance with medication, make him a potential danger to himself and others. The doctor also concluded that J.B. should be continued at Ann Klein, not a less restrictive setting, because he could not maintain himself in a less restrictive setting.

J.B.'s expert, Daniel P. Greenfield, M.D., evaluated J.B. once prior to the hearing for approximately five hours. He also reviewed J.B.'s medical records and other documents. He acknowledged that the documents reveal that J.B. had been institutionalized and had received psychiatric treatment at various times since the age of twelve for acting out behaviors. J.B. also may have had attention deficit hyperactivity disorder, childhood bipolar disorder, and anti-social personality disorder. Nonetheless, the doctor opined that J.B. only has an Axis I diagnosis of polysubstance abuse in institutional remission, and an Axis II diagnosis of antisocial personality disorder. He concluded that J.B. does not have an Axis I diagnosis of bipolar disorder and that without an Axis I diagnosis, there was no clinical reason for J.B.'s commitment to a psychiatric institution.

On cross-examination, Dr. Greenfield conceded that J.B. has been manipulative and that because of his behaviors there was no reasonable likelihood that he would change; that J.B. does not want to take medication; that J.B. is always going to have the "propensity to act out and to try to act out in a potentially dangerous way against society and needs to be contained for that reason[;]" [FN3] and that J.B.

poses a danger to himself and others by virtue of his behvaiors.

> [FN3] The doctor stated that such confinement should be prison rather than a psychiatric institution.

At the conclusion of the hearing, the judge found as follows:

> First and foremost I place greater weight on Dr. Ghahramani's testimony and analysis than that of Dr. Greenfield. I find that it was Dr. Ghahramani's professional opinion, a summary of his findings and recommendations based on a reasonable medical certainty that [J.B.] has been suffering and continues to suffer from an emotional condition known as a bipolar disorder. He continues to say at some point in his recommendation, findings and recommendations, that [J.B.] is both manipulative and continues to be manipulative, has not benefitted from treatment.
>
> The treatment team feels that he continues to be a high risk if he is to be transferred to a less restrictive setting.
>
> The recommendation of Dr. Ghahramani is that [J.B.'s commitment e continued and case reviewed at a later time.
>
> Now, although I place greater weight on Dr. Ghahramani's testimony than that of Dr. Greenfield, Dr. Greenfield today says that [J.B.] is in need of psychotherapy and containment. He does say [J.B.] will always have the propensity to act out against society according to my notes, that he's been in treatment sometime since his teenage years, just after the age of twelve, and I starred my notes when he said it.
>
> Dr. Greenfield says [J.B.'s] acting out is a danger to himself and others.
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> [Dr. Greenfield] further testifies that bipolar diagnosis never goes away. It [] occasionally may be in remission. And although

> Dr. Greenfield does not feel [J.B.] is presently exhibiting any bipolar symptoms, he doesn't feel he is bipolar, Dr. Ghahramani does and I place greater weight in Dr. Ghahramani's testimony.
>
> I do find there is an Axis I diagnosis and I find from what Dr. Greenfield says that bipolar diagnosis never goes away. Although it may be in remission.
>
> I find that [J.B.] is a danger to himself and others and I will continue the commitment as it is presently constituted and I'm going to ask for a review six months from today which will be March 28, 2008 at 1:45 in this courtroom.

The judge entered the October 12, 2007 order continuing J.B.'s commitment.

(Opinion of Appellate Division at 2-9 (June 16, 2009).)

On June 16, 2009, the Appellate Division affirmed the commitment order. On October 23, 2009, the Supreme Court of New Jersey denied certification. In re Commitment of J.B., 200 N.J. 476 (2009).

This Petition followed. Here, Petitioner contends that his continued commitment is unconstitutional because (1) there was not sufficient evidence that he was presently suffering from an active mental illness and (2) there was not sufficient evidence that he was dangerous because of a mental illness. (Petition, ¶ 12.) Briefing is now complete and this matter is ready for decision.

II. 28 U.S.C. § 2254

As amended by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), 28 U.S.C. § 2254 now provides, in pertinent part:

> (a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

With respect to any claim adjudicated on the merits in state court proceedings, the writ shall not issue unless the adjudication of the claim

> (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determinated by the Supreme Court of the United States; or
>
> (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d).

A state court decision is "contrary to" Supreme Court precedent "if the state court applies a rule that contradicts the governing law set forth in [Supreme Court] cases," or "if the state court confronts a set of facts that are materially indistinguishable from a decision of th[e] Court and nevertheless arrives at a result different from [the Court's] precedent." Williams v. Taylor, 529 U.S. 362, 405-06 (2000) (O'Connor, J., for the Court, Part II). A state court decision "involve[s] an

unreasonable application" of federal law "if the state court identifies the correct governing legal rule from [the Supreme] Court's cases but unreasonably applies it to the facts of the particular state prisoner's case," and may involve an "unreasonable application" of federal law "if the state court either unreasonably extends a legal principle from [the Supreme Court's] precedent to a new context where it should not apply or unreasonably refuses to extend that principle to a new context where it should apply," (although the Supreme Court expressly declined to decide the latter). Id. at 407-09. To be an "unreasonable application" of clearly established federal law, the state court's application must be objectively unreasonable. Id. at 409. In determining whether the state court's application of Supreme Court precedent was objectively unreasonable, a habeas court may consider the decisions of inferior federal courts. Matteo v. Superintendent, 171 F.3d 877, 890 (3d Cir. 1999).

Even a summary adjudication by the state court on the merits of a claim is entitled to § 2254(d) deference. Chadwick v. Janecka, 302 F.3d 107, 116 (3d Cir. 2002) (citing Weeks v. Angelone, 528 U.S. 225, 237 (2000)). With respect to claims presented to, but unadjudicated by, the state courts, however, a federal court may exercise pre-AEDPA independent judgment. See Hameen v. State of Delaware, 212 F.3d 226, 248 (3d Cir. 2000), cert. denied, 532 U.S. 924 (2001); Purnell v. Hendricks, 2000 WL

1523144, *6 n.4 (D.N.J. 2000). See also Schoenberger v. Russell, 290 F.3d 831, 842 (6th Cir. 2002) (Moore, J., concurring) (and cases discussed therein). In such instances, "the federal habeas court must conduct a de novo review over pure legal questions and mixed questions of law and fact, as a court would have done prior to the enactment of AEDPA." Appel v. Horn, 250 F.3d 203, 210 (3d Cir. 2001) (citing McCandless v. Vaughn, 172 F.3d 255, 260 (3d Cir. 1999)). "However, § 2254(e)(1) still mandates that the state court's factual determinations are presumed correct unless rebutted by clear and convincing evidence." Simmons v. Beard, 581 F.3d 158, 165 (3d Cir. 2009).

The deference required by § 2254(d) applies without regard to whether the state court cites to Supreme Court or other federal caselaw, "as long as the reasoning of the state court does not contradict relevant Supreme Court precedent." Priester v. Vaughn, 382 F.3d 394, 398 (3d Cir. 2004) (citing Early v. Packer, 537 U.S. 3 (2002); Woodford v. Visciotti, 537 U.S. 19 (2002)).

Although a petition for writ of habeas corpus may not be granted if the Petitioner has failed to exhaust his remedies in state court, a petition may be denied on the merits notwithstanding the petitioner's failure to exhaust his state court remedies. See 28 U.S.C. § 2254(b)(2); Lambert v.

Blackwell, 387 F.3d 210, 260 n.42 (3d Cir. 2004); Lewis v. Pinchak, 348 F.3d 355, 357 (3d Cir. 2003).

Finally, a pro se pleading is held to less stringent standards than more formal pleadings drafted by lawyers. Estelle v. Gamble, 429 U.S. 97, 106 (1976); Haines v. Kerner, 404 U.S. 519, 520 (1972). A pro se habeas petition and any supporting submissions must be construed liberally and with a measure of tolerance. See Royce v. Hahn, 151 F.3d 116, 118 (3d Cir. 1998); Lewis v. Attorney General, 878 F.2d 714, 721-22 (3d Cir. 1989); United States v. Brierley, 414 F.2d 552, 555 (3d Cir. 1969), cert. denied, 399 U.S. 912 (1970).

III. CIVIL COMMITMENT IN NEW JERSEY

The State of New Jersey has made certain findings regarding the need for treatment of mentally ill individuals.

> The Legislature finds and declares that:
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> a. The State is responsible for providing care, treatment and rehabilitation services to mentally ill persons who are disabled and cannot provide basic care for themselves or who are dangerous to themselves, others or property; and because some of these mentally ill persons do not seek treatment or are not able to benefit from voluntary treatment provided on an outpatient basis, it is necessary that State law provide for the voluntary admission and the involuntary commitment to treatment of these persons as well as for the public services and facilities necessary to fulfill these responsibilities.
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> b. Because involuntary commitment to treatment entails certain deprivations of liberty, it is necessary that State law balance the basic value of liberty with the need for safety and treatment, a balance that is difficult to effect because of the limited ability to

> predict behavior; and, therefore, it is necessary that State law provide clear standards and procedural safeguards that ensure that only those persons who are dangerous to themselves, others or property, are involuntarily committed to treatment.

N.J.S.A. 30:4-27.1.

Accordingly, the State of New Jersey has enacted a civil commitment scheme applicable, inter alia, to persons who have been found not guilty of crimes by reason of insanity. More specifically, upon entry of such a judgment, the court shall order that the defendant undergo a psychiatric examination by a psychiatrist of the prosecutor's choice. N.J.S.A. 2C:4-8a. Thereafter, the trial court shall dispose of the defendant as follows:

> (1) If the court finds that the defendant may be released without danger to the community or himself without supervision, the court shall so release the defendant; or
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> (2) If the court finds that the defendant may be released without danger to the community or to himself under supervision or under conditions, the court shall so order; or
>
> (3) If the court finds that the defendant cannot be released with or without supervision or conditions without posing a danger to the community or to himself, it shall commit the defendant to a mental health facility approved for this purpose by the Commissioner of Human Services to be treated as a person civilly committed. In all proceedings conducted pursuant to this section and pursuant to section N.J.S. 2C:4-6 concerning a defendant who lacks the fitness to proceed, including any periodic review proceeding, the prosecuting attorney shall have the right to appear and be heard. The defendant's continued commitment, under the law governing civil commitment, shall be established by a preponderance of the evidence, during

> the maximum period of imprisonment that could have been imposed, as an ordinary term of imprisonment, for any charge on which the defendant has been acquitted by reason of insanity. ...

N.J.S.A. 2C:4-8b (emphasis added).

Under the law governing civil commitment, the state may involuntarily commit persons found to be "in need of involuntary commitment" following a judicial procedure. See N.J.S.A. 30:4-27.1 et seq. "'In need of involuntary commitment' or 'in need of involuntary commitment to treatment' means that an adult with mental illness, whose mental illness causes the person to be dangerous to self or dangerous to others or property and who ... needs outpatient treatment or inpatient care ...." N.J.S.A. 30:4-27.2m.

"'Mental illness' means a current, substantial disturbance of thought, mood, perception or orientation which significantly impairs judgment, capacity to control behavior or capacity to recognize reality, but does not include simple alcohol intoxication, transitory reaction to drug ingestion, organic brain syndrome or developmental disability unless it results in the severity of impairment described herein. The term mental illness is not limited to 'psychosis' or 'active psychosis,' but shall include all conditions that result in the severity of impairment described above." N.J.S.A. 30:4-27.2r.

"'Dangerous to self' means that by reason of mental illness the person has threatened or attempted suicide or serious bodily

harm, or has behaved in such a manner as to indicate that the person is unable to satisfy his need for nourishment, essential medical care or shelter, so that it is probable that substantial bodily injury, serious physical harm or death will result within the reasonably foreseeable future; however, no person shall be deemed to be unable to satisfy his need for nourishment, essential medical care or shelter if he is able to satisfy such needs with the supervision and assistance of others who are willing and available. This determination shall take into account a person's history, recent behavior and any recent act, threat or serious psychiatric deterioration." N.J.S.A. 30:4-27.2h.

"'Dangerous to others or property' means that by reason of mental illness there is a substantial likelihood that the person will inflict serious bodily harm upon another person or cause serious property damage within the reasonably foreseeable future. This determination shall take into account a person's history, recent behavior and any recent act, threat or serious psychiatric deterioration." N.J.S.A. 30:4-27.2i.

A person committed following a finding of not guilty by reason of insanity is entitled to period review hearings and to release upon a finding that he is no longer mentally ill and dangerous. See generally State v. Krol, 68 N.J. 236 (1975).

IV. ANALYSIS

Here, Petitioner contends that his continued commitment is unconstitutional because (1) there was not sufficient evidence that he was presently suffering from an active mental illness and (2) there was not sufficient evidence that he was dangerous because of a mental illness. (Petition, ¶ 12.)[4]

The Appellate Division rejected these claims on direct appeal.

> J.B. first contends that the court should have terminated his Krol status because the State failed to prove that he currently suffers from any active mental illness. He points to Dr. Ghahramani's testimony that he does not currently display overtly psychotic or manic behavior, that his symptoms are milk, and that his condition is now in remission and does not currently fit the criteria of an individual who could be civilly committed under state law. He also points to Dr. Greenfield's testimony that he does not have bipolar disorder and does not require commitment. Alternatively, he seeks placement in a less restrictive environment.[FN4]
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> > [FN4] J.B. was on level one supervision at the time of the hearing, which is the most restrictive level of supervision.
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> ...

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[4] In the Reply brief submitted by Petitioner's counsel, it is argued that there are three claims presented, including a claim that the state court violated Petitioner's rights under the Equal Protection Clause by applying a different commitment standard for Krol patients as opposed to other civil committees, in that the state court committed Petitioner solely on the basis of dangerousness. This claim was not asserted in the Petition, was not exhausted in state court, and will not be considered here. In any event, the claim is patently meritless.

"'When a person accused of a crime is acquitted by reason of insanity, the accused may be held in continued confinement if the person is a danger to self or others and is in need of medical treatment." ... The State must show by a preponderance of the evidence that the defendant is mentally ill and poses a danger to himself or society. Krol, supra, 68 N.J. at 257. "Krol established the procedures for determining the length of commitment for a person who has been acquitted by reason of insanity." ... "'Commitment requires that there be a substantial risk of dangerous conduct within the reasonably foreseeable future. Evaluation of the magnitude of the risk involves consideration both of the likelihood of dangerous conduct and the seriousness of the harm which may ensue if such conduct takes place.'" ... The focus is on whether the defendant "presently poses a significant threat of harm either to himself or others."

"'After the defendant is committed, periodic review hearings (Krol hearings) are held in a criminal proceeding on notice to the prosecutor to determine if continued involuntary commitment is warranted.'" ... During the Krol hearings, the State must establish the need for continued commitment by the preponderance of the evidence. ... These hearings will continue "'during the maximum period for which imprisonment could have been imposed as an ordinary term of imprisonment for the charges on which the defendant has been acquitted by reason of insanity, after giving credit for all time spent in confinement for the charges.'" ...

"The continued involuntary commitment of an NGI defendant is based upon the court's determination of whether the State has demonstrated that the defendant continues to be a danger to [him]self or others." ... "[A] Krol status defendant may remain committed for longer than the ordinary maximum term if the court finds that [he] remains a danger to [him]self or others." ...

The determination of "dangerousness" is "'a legal one, not a medical one.'" ...

> The standard is "dangerous to self or society." Dangerous conduct is not identical with criminal conduct. Dangerous conduct involves not

> merely violation of social norms enforced by criminal sanctions, but significant physical or psychological injury to persons or substantial destruction of property. Persons are not to be indefinitely incarcerated because they present a risk of future conduct which is merely socially undesirable. Personal liberty and autonomy are of too great value to be sacrificed to protect society against the possibility of future behavior which some may find odd, disagreeable, or offensive, or even against the possibility of future non-dangerous acts which would be ground for criminal prosecution if actually committed. Unlike inanimate objects, people cannot be suppressed simply because they may become public nuisances.
>
> [Krol, supra, 68 N.J. at 259-60.]

There must be a "substantial risk of dangerous conduct within the reasonably foreseeable future." Id. at 260. Ultimately, the "[d]etermination of dangerousness involves prediction of defendant's future conduct rather than mere characterization of his past conduct. Nonetheless, defendant's past conduct is important evidence as to his probable future conduct." Id. at 260-61. The final determination of dangerousness requires a "delicate balancing of society's interest in protection from harmful conduct against the individual's interest in personal liberty and autonomy." Id. at 261.

Based upon our careful review, we are satisfied that the record amply supports the judge's factual and credibility findings, and his conclusion that J.B. continues to be a danger to himself and others and should remain involuntarily committed. We are also satisfied that the record amply supports J.B.'s continued confinement in a more restrictive placement.

(Opinion of Appellate Division at 10-15 (June 16, 2009) (citations omitted).

Certainly, civil commitment represents a profound loss of personal liberty that requires both substantive and procedural

due process protection. See, e.g., Parham v. J.R., 442 U.S. 584 (1979); Jackson v. Indiana, 406 U.S. 715 (1972). Nevertheless, "that liberty interest is not absolute." Kansas v. Hendricks, 521 U.S. 346, 356 (1997).

The Supreme Court of the United States has recognized that states have a legitimate interest under their parens patriae powers in providing care to their citizens who are unable because of emotional disorders to care for themselves; the states also have authority under their police power to protect the community from the dangerous tendencies of those who are mentally ill. Addington v. Texas, 441 U.S. 418 (1979). Generally, states bear the burden of proving mental illness and dangerousness by clear and convincing evidence. Id.

In the case of persons acquitted of criminal acts by reason of insanity, however, the verdict establishes two facts: (1) the defendant committed an act that constitutes a criminal offense, and (2) he committed the act because of mental illness. See Jones v. United States, 463 U.S. 354, 363-64 (1983). Thus, the verdict establishes "dangerousness" beyond a reasonable doubt; the verdict is also sufficient to permit an inference of continuing mental illness, so long as there is timely review of that issue. Id. at 364-66. Therefore, "a finding of not guilty by reason of insanity is a sufficient foundation for commitment

of an insanity acquittee for the purposes of treatment and the protection of society." Id. at 366.

Moreover, the differences between insanity acquittees and ordinary members of the public justify a different standard of proof in commitment of insanity acquittees. Jones v. United States, 463 U.S. at 366-67. Because of concern that members of the public could be confined on the basis of "some abnormal behavior which might be perceived by some as symptomatic of a mental or emotional disorder, but which is in fact within a range of conduct that is generally acceptable," the Court in Addington v. Texas held that civil requirement of such ordinary members of the public required proof by clear and convincing evidence. Addington, 441 U.S. at 426-27. By contrast, where automatic commitment follows only if the acquittee himself has advanced insanity as a defense and has proven that his criminal act was a product of his mental illness, there is good reason for a diminished "preponderance of the evidence" standard of proof for civil commitment of insanity acquittees. Jones, 463 U.S. at 367-68 (citing Morrissey v. Brewer, 408 U.S. 471, 481 (1972)("due process is flexible and calls for such procedural protections as the particular situation demands").

> We hold that when a criminal defendant establishes by a preponderance of the evidence that he is not guilty of a crime by reason of insanity, the Constitution permits the Government, on the basis of the insanity judgment, to confine him to a mental institution until such time as he has regained his sanity or is no longer a danger

> to himself or society. This holding accords with the widely and reasonably held view that insanity acquittees constitute a special class that should be treated differently from other candidates for commitment.

Jones, 463 U.S. at 370.

Where an insanity committee is no longer mentally ill, however, he may not be confined solely because he is deemed dangerous. Foucha v. Louisiana, 504 U.S. 71 (1991).

Here, the government of New Jersey provided competent factual and expert evidence that Petitioner suffers from bipolar disorder, that bipolar disorder is a lifelong condition, that Petitioner's mental illness is controlled only when he is taking anti-psychotic medication and that he has a history of refusing to take his medication, that he does not have good insight into his disease or the need to continue to take his medication, that his condition is complicated by other diagnoses including personality disorder and polysubstance abuse (currently in institutional remission), that the combination of mental health problems make him a very high risk to cease taking his medication and to be a danger to himself and others.

It is specious to suggest that there was not sufficient evidence to establish both that Petitioner currently suffers from a mental illness and that that mental illness causes him to be dangerous. The decisions of the state courts are neither contrary to nor an unreasonable application of controlling

Supreme Court precedent. Nor are the state court decisions based on unreasonable determinations of fact in light of the evidence presented. Petitioner is not entitled to habeas relief. Cf. U.S. v. S.A., 129 F.3d 995 (8th Cir. 1997) (involving civil commitment under 18 U.S.C. § 4246) (history of violent behavior coupled with reluctance to continue taking medication is sufficient to establish dangerousness; also, while the government's expert did not directly testify that the patient's mental illness "caused" his violent behavior, the statement that the patient's condition was a "significant factor" contributing to his violent behavior was more than sufficient to support a finding that the patient's dangerousness was a result of his mental illness).

IV. CERTIFICATE OF APPEALABILITY

Pursuant to 28 U.S.C. § 2253(c), unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken from a final order in a proceeding under 28 U.S.C. § 2254. A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). "A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate

to deserve encouragement to proceed further." Miller-El v. Cockrell, 537 U.S. 322, 327 (2003).

Here, jurists of reason would not disagree with this Court's decision that Petitioner has failed to make a substantial showing of the denial of a constitutional right. No certificate of appealability shall issue.

V. CONCLUSION

For the reasons set forth above, the Petition will be denied. An appropriate order follows.

Dennis M. Cavanaugh
United States District Judge

Dated: 12/20/10