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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PAUL F. JENNINGS,
Plaintiff,
v.
AUDREY KING, et al.,
Defendants.

Case No. 1:15-cv-00840-SAB
ORDER DISMISSING ACTION FOR
FAILURE TO STATE A CLAIM UPON
WHICH RELIEF COULD BE GRANTED

Plaintiff Jennings is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff has consented to magistrate judge jurisdiction pursuant to 28 U.S.C. § 636(c).¹

Plaintiff, a civil detainee housed at Coalinga State Hospital, brings this civil rights action against Dr. A. Azizian, Chief Psychologist at Corcoran State Hospital and Audrey King, Executive Director of Coalinga State Hospital. Plaintiff claims that the Sexually Violent Predator Act under which he is being held is unconstitutional.

I.
COMPLAINT

Plaintiff's complaint essentially alleges that Plaintiff was civilly committed pursuant to Civil Commitment Petition filed by the Shasta County District Attorney pursuant to California

¹ Plaintiff filed a consent to proceed before a magistrate judge on June 12, 15 (ECF No. 5.)

1 Welfare and Institutions Code § 6600. The petition alleged that Plaintiff met the criteria of a
2 person who has been convicted of sexually violent offenses and who has a diagnosed mental
3 disorder that makes him a danger to the health and safety of others, in that it is likely that
4 Plaintiff will engage in sexually violent criminal behavior after completing his term of
5 imprisonment. The allegations in the petition were found to be true by a jury, and Plaintiff was
6 civilly recommitted indefinitely in to custody at Coalinga State Hospital. The balance of the
7 complaint is a recitation of civil commitment procedures. Plaintiff's claims that the Sexually
8 Violent Predator Act is facially invalid because detainees are denied the right to petition for
9 unconditional release. Plaintiff also claims that the post-commitment review procedures are
10 unconstitutional.

11 II.

12 ANALYSIS

13 A. Original Commitment

14 The relevant procedures used to civilly detain sexually violent predators in the state of
15 California are codified in Sections 6600 through 6609.3 of the California Welfare and
16 Institutions Code. Under Section 6601, the California Department of Corrections and
17 Rehabilitation can refer an inmate that may be a sexually violent predator for an evaluation.
18 Cal. Welf. & Inst. Code § 6601(a)(1). After an initial screening, the individual is referred to
19 California Department of State Hospitals (CDSH) for a full evaluation to determine whether the
20 individual meets the criteria set forth in Section 6600. Cal. Welf. & Inst. Code § 6601(b)-(c).
21 The individual is examined by two psychiatrists or psychologists and if both professionals agree
22 that the individual has a diagnosed mental disorder such that he or she is likely to engage in acts
23 of sexual violence without appropriate treatment, the CDSH forwards a request for a petition for
24 commitment under Section 6602. Cal. Welf. & Inst. Code § 6601 (d). The county that receives
25 the request may file a petition for commitment in the state superior court. Cal. Welf. & Inst.
26 Code § 6601 (I).

27 A judge from the superior court reviews the petition and determines whether there is
28 probable cause to believe that the individual is likely to engage in sexually violent predatory

1 criminal behavior upon his or her release. Cal. Welf. & Inst. Code § 6602(a). At the probable
2 cause hearing, the individual is entitled to the assistance of counsel. Id. If there is probable
3 cause, a trial is conducted to determine whether the individual is a danger to the health and safety
4 of others by reason of a diagnosed mental disorder and is likely to engage in acts of sexual
5 violence upon release. Id. The individual is entitled to the assistance of counsel, the right to
6 retain experts or professional persons to perform an examination on his or her behalf, and the
7 right to have access to all relevant medical and psychological reports. Cal. Welf. & Inst. Code §
8 6603(a). Indigent individuals have the right to appointed counsel and assistance in obtaining an
9 expert or professional to perform an examination. Id. Individuals also have a right to demand a
10 trial by jury. Cal. Welf. & Inst. Code § 6603(b). A unanimous verdict is required in any jury
11 trial. Cal. Welf. & Inst. Code § 6603(f). The relevant burden of proof that must be met whether
12 the individual, beyond a reasonable doubt, is a sexually violent predator. Cal. Welf. & Inst.
13 Code § 6604.

14 **B. Post Commitment Proceedings**

15 A person civilly committed under the SVPA is committed to an indeterminate term. Cal.
16 Welf. & Inst. Code § 6604-6604.1. While confined, “[t]he person shall be evaluated by two
17 practicing psychologists or psychiatrists, or by one practicing psychologist and one practicing
18 psychiatrist, designated by the Department of State Hospitals.” Cal. Welf. & Inst. Code §
19 6604.1. Additionally, the provisions of Section 6601(c) – (i) and the rights, requirements, and
20 procedures set forth in Section 6603 “shall apply to all commitment proceedings.”

21 Under the SVPA, a person who has been found to be a sexually violent predator “shall
22 have a current examination of his or her mental condition made at least once every year.” Cal.
23 Welf. & Inst. Code § 6605(a). The examination includes consideration of whether the
24 committed person currently meets the definition of a sexually violent predator and whether
25 conditional release to a less restrictive alternative or an unconditional release is in the best
26 interest of the person. Id. If it is determined that the person is no longer a sexually violent
27 predator, or that conditional release to a less restrictive alternative is in the best interest of the
28 person, the director of CDSH shall authorize the person to petition the court for conditional or

1 unconditional discharge. Cal. Welf. & Inst. Code § 6605(b).

2 However, even if CDSH fails to recommend Plaintiff for conditional release or
3 unconditional discharge under Section 6608, a detainee may directly petition the court “for
4 conditional release or an unconditional discharge without the recommendation or concurrence of
5 the Director of Mental Health.” *Id.* “The person petitioning for conditional release and
6 unconditional discharge under this subdivision shall be entitled to the assistance of counsel.” *Id.*
7 A petition in this manner is somewhat more restrictive because if the individual had previously
8 filed a petition for conditional release without CDSH’s recommendation, and the court
9 determined that the previous petition was frivolous or the individual’s condition has not so
10 changed that he or she would not be a danger to others, the court may deny the subsequent
11 petition “unless it contains facts upon which a court could find that the condition of the
12 committed person had so changed that a hearing was warranted.” Cal. Welf. & Inst. Code §
13 6608(a). Further, upon receipt of a first or subsequent petition filed without CDSH’s
14 recommendation, the court may deny the petition without a hearing if it determines that the
15 petition is based on frivolous grounds. *Id.* If a hearing is held and the court determines that the
16 individual would not be a danger to others, the individual is placed in a forensic conditional
17 release program for at least one year and then re-evaluated by the court for unconditional release.
18 Cal. Welf. & Inst. Code § 6608(d). In any hearing under Section 6608, “the petitioner shall have
19 the burden of proof by a preponderance of the evidence.” Cal. Welf. & Inst. Code § 6608(i).

20 **C. Due Process and SVPA**

21 “[C]ivil commitment for any purpose constitutes a significant deprivation of liberty that
22 requires due process protection.” *Addington v. Texas*, 441 U.S. 418, 425 (1979). “[I]n certain
23 narrow circumstances,” states may “provide for the forcible civil detainment of people who are
24 unable to control their behavior and who thereby pose a danger to the public health and safety.”
25 *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997). Statutes providing for involuntary civil
26 commitment have been “consistently upheld . . . provided the confinement takes place pursuant
27 to proper procedures and evidentiary standards.” *Id.* (holding that Kansas Sexually Violent
28 Predator Act comports with due process requirements.”

1 The Court finds that the post-commitment procedures set forth in the SVPA do not
2 violate the Due Process Clause of the Fourteenth Amendment. In civil commitment hearings, the
3 factors relevant in determining whether an individual has been afforded sufficient procedural
4 protections under the due process clause are whether the individual has received: 1) written
5 notice; 2) a hearing at which the evidence being relied upon for the commitment is disclosed to
6 the prisoner; 3) an opportunity at the hearing for the prisoner to be heard in person, to present
7 testimony and documentary evidence, and to cross-examine witnesses called by the state; 4) an
8 independent decision maker; 5) reasoned findings of fact; 6) legal counsel; and 7) effective and
9 timely notice of these rights. See Vitek v. Jones, 445 U.S. 480, 494-97 (1980); Carty v. Nelson,
10 426 F.3d 1064, 1074 (9th Cir. 2005). Plaintiff has not alleged that he was deprived of any of
11 these procedural protections.

12 Even if Plaintiff had alleged deficiencies on the part of the evaluators, he cannot state a
13 claim for a due process violation. The evaluators are not the ultimate decision makers who
14 decide whether Plaintiff should continue to be detained. Under the SVPA's scheme, a superior
15 court judge is the ultimate decision maker. The SVPA scheme permits Plaintiff to file a petition
16 in state court for conditional or unconditional release without the recommendation of the
17 evaluators of CDSH. Thus, even if any allegations of procedural deficiency are proven true, the
18 alleged impropriety is of little consequence because Plaintiff can file a petition for release
19 directly to the court and would be entitled to the assistance of an attorney and will have the
20 opportunity to present evidence before a state judge in support of his contention that he is no
21 longer a sexually violent predator within the definition of the SVPA. Presumably, within the
22 petition itself and at any subsequent hearing, Plaintiff will have the opportunity to present
23 evidence in support of his contention that the evaluators' opinions are not worthy of
24 consideration because of their biases. In other words, the SVPA scheme provides for sufficient
25 procedural mechanisms for Plaintiff to challenge the evaluators' conclusions and provides
26 Plaintiff with the opportunity to prove by a preponderance of the evidence in a hearing before a
27 state court judge that he no longer qualifies for civil detainment. The Court finds that the
28 procedural protections provided by California's SVPA do not violate due process. See Robinson

1 Cir. 1987).

2 Accordingly, IT IS HEREBY ORDERED that this action is dismissed for failure to state
3 a claim upon which relief could be granted. The Clerk is directed to close this case.

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5 IT IS SO ORDERED.

6 Dated: January 20, 2016


UNITED STATES MAGISTRATE JUDGE

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