

SUPREME COURT OF ILLINOIS

In re Detention of Varner

Varner · No. No. 90151 · Decided October 2, 2003

SUMMARY

The Illinois Supreme Court reconsidered Herbert Varner’s civil commitment under the Sexually Violent Persons Commitment Act after the United States Supreme Court vacated and remanded the court’s earlier decision in light of *Kansas v. Crane*. The court held that the Act and the jury instructions satisfied substantive due process because they constitutionally incorporated a requirement of lack of volitional control, without requiring a separate express finding on that issue. The court therefore affirmed the appellate court’s judgment upholding Varner’s commitment to the Department of Human Services.

CASE DETAILS

COURT	Supreme Court of Illinois
WRITING FOR THE COURT	Justice Freeman
JURISDICTION	Illinois
DECIDED	October 2, 2003
DOCKET	No. 90151
DISPOSITION	affirmed
PROCEDURAL POSTURE	After the United States Supreme Court vacated the Illinois Supreme Court’s prior judgment and remanded for reconsideration in light of <i>Kansas v. Crane</i> , the Illinois Supreme Court reconsidered Varner’s substantive-due-process challenge to his commitment under the Sexually Violent Persons Commitment Act and again affirmed.
STANDARD OF REVIEW	De novo review of the constitutional challenge to the Sexually Violent Persons Commitment Act and the adequacy of the jury instructions.
PRECEDENTIAL VALUE	Published Illinois Supreme Court opinion; binding statewide precedent.
PARTIES	Herbert Varner v. The People of the State of Illinois

TOPICS

- substantive due process
- constitutional law
- appellate procedure
- writ of certiorari

PRACTICE AREAS

constitutional law

civil commitment

mental health law

appellate procedure

QUESTIONS PRESENTED

1. Whether substantive due process requires a jury or other fact finder to make a separate, specific finding that a person lacks volitional control over sexually violent behavior before commitment under the Sexually Violent Persons Commitment Act.
2. Whether the Act's definitions of sexually violent person and mental disorder, together with the jury instructions tracking those definitions, supplied the lack-of-control determination required by *Kansas v. Crane*.

HOLDINGS

1. No. The Constitution does not require a fact finder to make a separate, expressly labeled determination in every case that the respondent lacks volitional control over sexually violent conduct.
2. Yes. The jury instructions tracking the Act's definitions adequately supplied the constitutionally required lack-of-control determination, so Varner's commitment did not violate substantive due process.

KEY QUOTATIONS

"In Crane, the Court held that the United States Constitution does not permit commitment of dangerous sexual offenders without any lack-of-control determination; however, the lack of control does not have to be a total or complete lack of control." (at 11-12)

"A fact finder properly instructed with definitions of these and other pertinent statutory terms need not receive additional separate instruction on lack of control." (at 17)

"Thus, after considering the facts in this matter in light of both the United States Supreme Court's decision in Crane and our decision in Masterson, we reach the same conclusion as we did in our previous opinion, i.e., that Varner's commitment does not run afoul of substantive due process." (at 19)

FACTUAL BACKGROUND

Varner pleaded guilty to sexually assaulting his five-year-old niece and received a 13-year prison sentence. As his prison term ended, the State initiated proceedings under the Sexually Violent Persons Commitment Act. At trial, psychologists testified that Varner was a pedophile with a personality disorder and that the combination created a substantial probability of future sexual violence; another psychologist disputed the diagnosis and assessed his reoffense risk as moderate. The jury found Varner to be a sexually violent person, and he was committed to a secure Department of Human Services facility.

PROCEDURAL HISTORY

A Lake County circuit court jury found Varner to be a sexually violent person and the circuit court ordered him committed to the Department of Human Services for institutional care and treatment. The Illinois Appellate Court affirmed. The Illinois Supreme Court previously affirmed, holding that the Act did not violate substantive

due process, but the United States Supreme Court vacated that judgment and remanded in light of *Kansas v. Crane*. On reconsideration, the Illinois Supreme Court again affirmed the appellate court's judgment.

DISPOSITION

affirmed

CASES CITED

- *Kansas v. Hendricks*, 521 U.S. 346 (1997)
- *Kansas v. Crane*, 534 U.S. 407 (2002)
- *In re Care & Treatment of Crane*, 269 Kan. 578, 7 P.3d 285 (2000)
- *In re Detention of Varner*, 315 Ill. App. 3d 626 (2000)
- *In re Detention of Varner*, 198 Ill. 2d 78 (2001)
- *Varner v. Illinois*, 537 U.S. 802 (2002)
- *People v. Masterson*, No. 93579, slip op. at 10-19 (October 2, 2003)
- *In re Detention of Dean*, 337 Ill. App. 3d 610 (2003)
- *People v. Swanson*, 335 Ill. App. 3d 117 (2002)
- *In re Detention of Isbell*, 333 Ill. App. 3d 906 (2002)