

SUPREME COURT OF ARKANSAS

Parkman v. Sex Offender Screening and Risk Assessment Committee

307 S.W.3d 6 (Ark. 2009) · No. No. 08-1165 · Decided April 16, 2009

SUMMARY

The Supreme Court of Arkansas affirmed the dismissal of John P. Parkman's administrative appeal challenging his level-four sex-offender classification. The court held that Parkman was not entitled to a second face-to-face hearing, that use of his assessment statements did not violate the privilege against self-incrimination because the assessment process was civil and regulatory, and that retroactive application did not violate ex post facto prohibitions. The court also rejected his arguments that the Committee failed to comply with statutory and regulatory assessment requirements.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Paul E. Danielson
JURISDICTION	Arkansas
DECIDED	April 16, 2009
DOCKET	No. 08-1165
DISPOSITION	affirmed
PROCEDURAL POSTURE	Parkman sought judicial review under the Arkansas Administrative Procedure Act of the Committee's level-four sex-offender assessment. The circuit court found substantial evidence supported the agency's decision, rejected the constitutional challenges, affirmed the administrative decision, and dismissed the petition with prejudice. Parkman appealed to the Supreme Court of Arkansas.
STANDARD OF REVIEW	Under the Arkansas Administrative Procedure Act, review is directed to the agency's decision rather than the circuit court's decision. The agency decision is upheld if supported by substantial evidence and not arbitrary, capricious, or characterized by an abuse of discretion.
PRECEDENTIAL VALUE	Published opinion; precedential Supreme Court of Arkansas decision.
PARTIES	John P. Parkman v. Sex Offender Screening and Risk Assessment Committee

TOPICS

judicial review of agency action

administrative procedure act

procedural due process

ex post facto

statutory interpretation

PRACTICE AREAS

administrative law

constitutional law

sex-offender registration and assessment

appellate procedure

QUESTIONS PRESENTED

1. Whether procedural due process required the Committee to provide Parkman a second face-to-face hearing during administrative review.
2. Whether use of statements Parkman made during an assessment conducted under use immunity violated the Fifth Amendment or Arkansas constitutional protection against self-incrimination.
3. Whether applying the Sex Offender Registration Act and assessing Parkman as a level-four offender based on convictions predating the Act violated federal or state ex post facto prohibitions.
4. Whether the Committee's level-four assessment complied with statutory and regulatory requirements and was supported by substantial evidence rather than being arbitrary or capricious.

HOLDINGS

1. A sex offender who received a face-to-face assessment interview and a meaningful opportunity to provide his version of events is not constitutionally entitled to a second face-to-face hearing before the Committee during administrative review.
2. The court would not consider the stroke evidence because Parkman failed to raise it in either of his administrative-review requests.
3. Because the Sex Offender Registration Act and its assessment process are civil and regulatory rather than criminal, use of Parkman's assessment statements to determine his risk level did not violate the Self-Incrimination Clause.
4. The SORA and Parkman's level-four assessment did not violate the federal or Arkansas Ex Post Facto Clauses because the statutory scheme is civil and nonpunitive.
5. The Committee's findings and assessment complied with the applicable statutory requirements; the statute defining sexually violent predator did not require an express separate finding in the Committee's administrative-review order.
6. Substantial evidence supported the Committee's level-four assessment, and the assessment therefore was not arbitrary, capricious, unreasonable, or an abuse of discretion.

KEY QUOTATIONS

*“It is necessary, as a matter of public policy, to uphold prior decisions unless great injury or injustice would result.” (*10)*

“Given the overall balance of the Kennedy factors, we are left with the conclusion that, while there may be some punitive characteristics inherent in the registration and notification statute, the Act is essentially

*regulatory and therefore non-punitive in nature.” (*13)*

*“Because substantial evidence existed to support the Committee's assessment, it automatically follows that its assessment cannot be classified as unreasonable or arbitrary.” (*17)*

FACTUAL BACKGROUND

The Sex Offender Screening and Risk Assessment Committee assessed Parkman as a level-four sex offender after reviewing his criminal history, assessment records, interviews, and diagnosis of a sexual paraphilia. Parkman had convictions for sexual abuse and burglary in Arkansas and a Texas conviction for burglary with intent to commit rape; the record also included allegations and admissions concerning additional sexual assaults. He received an assessment interview and a supplemental interview, requested administrative review, and argued that the Committee should consider additional evidence and provide him a face-to-face hearing.

PROCEDURAL HISTORY

The Committee notified Parkman in November 2006 that he had been assessed as a level-four sex offender. After he requested administrative review, the Committee upheld the assessment. During circuit-court review, the court remanded the matter to the Committee for a final order containing findings of fact and conclusions of law, after which the Committee again upheld the level-four assessment. The circuit court affirmed, and the Supreme Court of Arkansas affirmed the circuit court.

DISPOSITION

affirmed

CASES CITED

- *Munson v. Arkansas Department of Correction Sex Offender Screening & Risk Assessment*, 369 Ark. 290, 253 S.W.3d 901 (2007)
- *Burchette v. Sex Offender Screening & Risk Assessment Committee*, 374 Ark. 467, 288 S.W.3d 614 (2008)
- *Arkansas Department of Correction v. Bailey*, 368 Ark. 518, 247 S.W.3d 851 (2007)
- *Cochran v. Bentley*, 369 Ark. 159, 174, 251 S.W.3d 253, 265 (2007)
- *Franklin v. Arkansas Department of Human Services*, 319 Ark. 468, 892 S.W.2d 262 (1995)
- *Allen v. Illinois*, 478 U.S. 364, 368 (1986)
- *United States v. Ward*, 448 U.S. 242, 248 (1980)
- *Edwards v. Stills*, 335 Ark. 470, 984 S.W.2d 366 (1998)
- *Kellar v. Fayetteville Police Department*, 339 Ark. 274, 5 S.W.3d 402 (1999)
- *Hudson v. United States*, 522 U.S. 93, 99 (1997)
- *Kennedy v. Mendoza-Martinez*, 372 U.S. 144 (1963)
- *Weems v. Little Rock Police Department*, 453 F.3d 1010 (8th Cir. 2006)
- *Weaver v. Graham*, 450 U.S. 24 (1981)
- *Williams v. State*, 325 Ark. 432, 930 S.W.2d 297 (1996)

- Wilson v. City of Pine Bluff, 278 Ark. 65, 643 S.W.2d 569 (1982)
- City of Benton v. Arkansas Soil & Water Conservation Commission, 345 Ark. 249, 45 S.W.3d 805 (2001)
- Collie v. Arkansas State Medical Board, 370 Ark. 180, 258 S.W.3d 367 (2007)
- Arkansas Department of Environmental Quality v. Brighton Corporation, 352 Ark. 396, 102 S.W.3d 458 (2003)

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