

IN THE SUPREME COURT OF IOWA
Supreme Court No. 22-1521

IN RE THE DETENTION OF
STEWART SHUMAN,

STEWART SCHUMAN,
RESPONDENT-APPELLEE

APPEAL FROM THE IOWA DISTRICT COURT
FOR STORY COUNTY
THE HONORABLE JAMES C. ELLEFSON, JUDGE

APPELLANT'S REPLY BRIEF

BRENNA BIRD
Attorney General of Iowa

LINDA J. HINES
Assistant Attorney General
Hoover State Office Building, 2nd Floor
Des Moines, Iowa 50319
(515) 281-5976
(515) 281-8894 (fax)
linda.hines@ag.iowa.gov

TIMOTHY C. MEALS
Story County Attorney

KEISHA F. CRESTINGER
Assistant Attorney General

ATTORNEYS FOR PLAINTIFF-APPELLANT

FINAL

TABLE OF CONTENTS

TABLE OF AUTHORITIES..... 3

STATEMENT OF THE ISSUE PRESENTED FOR REVIEW 4

RESPONSE TO APPELLEE’S ARGUMENT 5

**I. Neither Iowa Code section 229A.8A(2)(d) nor CCUSO’s
rules violate Schuman’s right to due process..... 5**

CONCLUSION10

REQUEST FOR NONORAL SUBMISSION.....10

CERTIFICATE OF COMPLIANCE 11

TABLE OF AUTHORITIES

State Cases

<i>In re Det. of Bergen</i> , 195 P.3d 529 (Wash. Ct. App. 2008)	7, 8
<i>In re Det. of Garren</i> , 620 N.W.2d 275 (Iowa 2000)	5
<i>In re Detention of Matlock</i> , 860 N.W.2d 898 (Iowa 2015)	8

State Statutes

Iowa Code § 229A.8(5)	6
Iowa Code § 229A.8A	5, 9
Iowa Code § 229A.8A(2)(d)	4, 5
Iowa Code § 229A.8A(6)	6
Iowa Code § 229A.9A	6, 9
Iowa Code § 229A.9A(1)(a) and (b)	9
Iowa Code § 229A.10	9

**STATEMENT OF THE ISSUE PRESENTED FOR
REVIEW**

- I. Neither Iowa Code section 229A.8A(2)(d) nor CCUSO's rules violate Schuman's right to due process.**

Authorities

In re Det. of Bergen, 195 P.3d 529 (Wash. Ct. App. 2008)

In re Det. of Garren, 620 N.W.2d 275 (Iowa 2000)

In re Detention of Matlock, 860 N.W.2d 898 (Iowa 2015)

Iowa Code § 229A.8A

Iowa Code § 229A.8A(2)(d)

Iowa Code § 229A.10

Iowa Code § 229A.8(5)

Iowa Code § 229A.8A(6)

Iowa Code § 229A.9A

Iowa Code § 229A.9A(1)(a) and (b)

RESPONSE TO APPELLEE'S ARGUMENT

I. **Neither Iowa Code section 229A.8A(2)(d) nor CCUSO's rules violate Schuman's right to due process.**

Schuman maintains that the State's reading of Iowa Code section 229A.8A(2)(d) to require the approval of an SVP's RPP (relapse prevention plan) by a treatment provider employed at CCUSO prior to granting transitional release, prohibits the district court from "performing its obligation to balance the liberty interest of the individual with the interest of the community on a case-by-case basis" in violation of "the committed person's right to substantive due process." Appellant's Br. p. 18.

"A person's interest in freedom from bodily restraint is 'at the core of the liberty protected by the Due Process Clause from arbitrary governmental actions.'" *In re Det. of Garren*, 620 N.W.2d 275, 284-85 (Iowa 2000) (rejecting an SVP's contention that "a violation of his substantive due process rights exists because chapter 229A does not provide for the 'least restrictive placement'" (citations omitted). There is a difference, however, between transitional release pursuant to Iowa Code section 229A.8A and release with supervision, or discharge, regardless of

whether they have attained transitional release placement, when the patient no longer satisfies the statutory criteria for civil commitment. *See* Iowa Code § 229A.9A (release with supervision).

There is no statutory requirement to have a RPP approved by the treatment provider prior to progressing out of CCUSO-- these criteria only apply to placement in a TRP. Transitional release does not implicate a liberty interest because it is not a prerequisite for a release from CCUSO. *See* Iowa Code § 229A.8(5) (stating standard on annual review); Iowa Code § 229A.9A (release with supervision).

Rather, placement in transitional release is placement in a different phase of treatment, the fifth phase of a five-phase program. It is a step-down phase of treatment, and independent to the issue of discharge. The legislature has assigned to CCUSO the responsibility of establishing the boundaries of the transitional release program. Iowa Code § 229A.8A(6) provides that “the department of human services shall be responsible for establishing and implementing the rules and directives regarding the location of the transitional release program, staffing needs, restrictions on

confinement, and for assessing the progress of committed persons in the program.”

The Washington Court of Appeals has found “the due process clause does not create a liberty interest when an SVP seeks release before the court has determined that he or she is no longer likely to reoffend or that he or she is entitled to conditional release to an LRA [least restrictive alternative].” *In re Det. of Bergen*, 195 P.3d 529, 534 (Wash. Ct. App. 2008).

In *Bergen*, an SVP argued that a Washington statute permitted the “State to defeat a proposed LRA by showing that it is not in his ‘best interests,’” [and] [. . .] violate[ed] his right to due process.” *Id.* at 531. The Court noted that “[t]he due process clause does not, of its own force, create a liberty interest when an inmate seeks release before serving the full maximum sentence.” *Id.* at 534. It reasoned that “[s]imilarly, the due process clause does not create a liberty interest when an SVP seeks release before the court has determined that he or she is no longer likely to

reoffend or that he or she is entitled to conditional release to an LRA.” *Id.*¹

Relying on *In re Detention of Matlock*, 860 N.W.2d 898, 906-07 (Iowa 2015), Schuman insists that CCUSO’S statutory authority to control his transitional release precludes the district court’s balancing his liberty interest and the interest of the community on a case-by-case basis. Appellant’s Br. p. 22. Once again, however, there is a difference between the liberty interest in transitional release and supervised release or discharge.

Supervised release is authorized only if “a. The attorney general stipulates to the release with supervision[.]” or “b. The court or jury has determined that the person should be released from a secure facility or a transitional release program, but *the court has determined the person suffers from a mental abnormality* and it is in the best interest of the community to order release with supervision before the committed person is

¹ The Court did find, however, that Washington’s “statutory provisions that allow an SVP to petition for an LRA dictate a particular outcome based on particular facts and therefore create a liberty interest in a conditional release to an LRA.” *Bergen*, 195 P.3d at 535.

discharged.” Iowa Code § 229A.9A(1)(a) and (b) (emphasis added).

Discharge is only authorized if “the director of human services determines that the person’s mental abnormality has so changed that the person is not likely to engage in predatory acts that constitute sexually violent offenses if discharged” and, if the discharge is contested by the attorney general, the district court finds the State failed to prove “beyond a reasonable doubt that the petitioner’s mental abnormality or personality disorder remains such that the petitioner is likely to engage in predatory acts that constitute sexually violent offenses if discharged.” Iowa Code § 229A.10.

Either under section 229A.9A or 229A.10, a court balances the liberty interest of the individual with the interest of the community on case-by-case basis. Although transitional release pursuant to section 229A.8A is a privilege provided by statute, due process does not require release before a person recovers from a mental abnormality or personality disorder that makes them likely to engage in sexually predatory offenses.

Therefore, the district court erred in substituting its opinion that Schuman met the criteria of having an approved RPP for the Legislature's and in granting Schuman transitional release.

CONCLUSION

The State respectfully request this Court reverse the district court's order finding Schuman suitable for placement in a Transitional Release Program.

REQUEST FOR NONORAL SUBMISSION

The State believes that this case can be resolved by reference to the briefs without further elaboration at oral argument.

Respectfully submitted,

BRENNNA BIRD
Attorney General of Iowa



LINDA J. HINES
Assistant Attorney General
Hoover State Office Bldg., 2nd Fl.
Des Moines, Iowa 50319
(515) 281-5976
linda.hines@ag.iowa.gov

CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

- This brief has been prepared in a proportionally spaced typeface using Georgia in size 14 and contains **944** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

Dated: May 15, 2023



LINDA J. HINES

Assistant Attorney General
Hoover State Office Bldg., 2nd Fl.
Des Moines, Iowa 50319
(515) 281-5976
linda.hines@ag.iowa.gov