

4. *People v. McKee (Richard)* (S162823)

Under the Sexually Violent Predator Act (SVP Act), a person who has committed a qualifying sexual offense, such as rape or child molestation, may be subject to involuntary civil commitment in a psychiatric institution after serving a prison sentence if he or she is found to have a diagnosed mental disorder that makes it likely he or she will engage in sexually violent criminal behavior. In order to be committed, the District Attorney has the burden of proving beyond a reasonable doubt before a jury that the individual qualifies as an SVP. Under the former version of the statute, the commitment term was for two years and could be renewed for another two years only if the DA again proved beyond a reasonable doubt that the individual qualified as an SVP.

In 2006, Proposition 83, also known as “Jessica’s Law,” made a number of changes in how sexual offenders are treated. This case focuses on one of those changes, that an SVP commitment is now indefinite. Under the new law, someone initially committed as an SVP who seeks release generally must petition the court to end the commitment and has the burden of proving by a preponderance of the evidence that he or she no longer meets the definition of an SVP.

In this case, the petitioner McKee is an SVP who challenges the new law on several constitutional grounds. First, he claims that because he has a strong liberty interest in not being involuntarily committed, the due process clause of the Fourteenth Amendment is violated by making his commitment indefinite and by effectively shifting the burden to him to prove he is no longer an SVP (instead of forcing the People to prove his SVP status every two years). Both McKee and the People rely on several United States Supreme Court cases that have addressed the due process protections the Constitution requires for those who are civilly committed.

Second, McKee claims the new law violates the constitutional prohibition against ex post facto laws. Ex post facto laws are generally defined as laws that retroactively alter the definition of a crime or increase punishment for a criminal act. Here, the argument turns on whether the change in the law at issue here constitutes increased punishment.

Third, McKee claims the new law violates the equal protection clause of the Fourteenth Amendment. He argues that other persons similarly situated who are involuntarily committed under other laws are committed, as was the case with the former SVP Act, for only a year or two, and the People must again prove beyond a reasonable doubt that those individuals should be involuntarily committed for another term. On the other hand, the People argue that SVP’s are not really similarly situated to other involuntarily committed persons, and that the

government should be given latitude to address the particular dangers posed by SVP's.