

concerns a determination of whether a defendant's waiver of rights is knowing and voluntary. The Supreme Court entrusted the trial court judge with the sole duty to perform a "penetrating and comprehensive examination" into this matter (*Von Moltke v. Gillies*, 332 U.S. 708, 724 (1948)). *Godinez* points to a heightened standard for entering a guilty plea or waiving a right. However, this does not entail a higher standard of competence, as per *Godinez*, "a criminal defendant's ability to represent himself has no bearing upon his competence to choose self-representation" (*Godinez*, p 400; emphasis in the original). The appeals court also referenced *United States v. Smith*, 413 F.3d 1253 (10th Cir. 2005), which asserts that a defendant's competence to waive the right to counsel is not necessarily associated with the competence to represent oneself at trial.

The trial court found that Mr. Maynard was aware of his charges, possible penalties, and the implications of waiving his right to counsel. The OCCA held that he voluntarily waived his right to counsel, as the waiver was competent, knowing, and intelligent, and thus was not contrary to established Supreme Court precedent. Furthermore, despite the defendant's history of mental illness and apparent unrealistic view of his case and possible defenses, as this concern is disconnected from competence to stand trial, there is no *per se* rule prohibiting such persons from waiving counsel. Indicating that it might have reached a different decision under the same circumstances, the appeals court nevertheless affirmed that the OCCA's ruling was consistent with established Supreme Court standards and not objectively unreasonable.

Discussion

This case adopts the view that a retrospective hearing on competence, even years later, does not violate constitutional rights. It also outlines the parameters of what might constitute an unreasonable decision by a court regarding competency. *Maynard* asserts that while clinical opinions regarding competence to stand trial may come into conflict with legal determinants, the trier of fact is in no way compelled to accept mental health professionals' expert opinions on the matter. Mr. Maynard's waiver of counsel in the hearing transcript, as quoted in the dissenting opinion, portrays a marginally cognitively functional defendant whose comprehension of the unfolding events is marked by significant confusion and para-

noid ideas. These factors could reasonably raise significant questions regarding Mr. Maynard's capacity to pursue his legal case, but notably did not spur an inquiry into his competency. Furthermore, the presiding judge relied on a uniquely legal lens to find Mr. Maynard competent to waive his rights, seemingly afforded little attention to his presenting cognitive and psychiatric difficulties, and apparently based his decision squarely on the defendant's factual understanding of the implications of proceeding *pro se*. Had a clinician been requested to opine in this case, it would probably have been difficult to overlook Mr. Maynard's apparent significantly compromised mental status. However, the court of appeals upheld this ruling, relying on an arguably low legal standard of reasonableness.

Prisoner's Rights and Deliberate Indifference

Daniel I. Bober, DO
Fellow in Forensic Psychiatry

Debra A. Pinals, MD
Director, Forensic Psychiatry Fellowship and Training
Co-Director, Law and Psychiatry Program

Law and Psychiatry Program
Department of Psychiatry
University of Massachusetts Medical School
Worcester, MA

The Right to Have Medical Needs Treated Without Deliberate Indifference Does Not Encompass a Right to a Correct Assessment of Suicide Risk

In *Perez v. Oakland County*, 466 F.3d 416 (6th Cir. 2006), the U.S. Court of Appeals for the Sixth Circuit affirmed the decision of the United States District Court for the Eastern District of Michigan. The lower court had granted summary judgment in favor of the defendant, a jail caseworker, and a county, in plaintiff's 42 U.S.C.S. § 1983 action alleging a violation of his son's Eighth Amendment rights by failure to provide appropriate mental health treatment and suicide monitoring leading to the son's suicide while incarcerated in the Oakland County jail.

Facts of the Case

Ariel Perez, Jr., an 18-year-old man at the time of his death, did not complete high school, and was

diagnosed when he was 6 years old as having attention deficit hyperactivity disorder (ADHD) and as being learning disabled. In February of 2001, when he was 17 years old, he pleaded guilty to two charges of felony larceny from a building and was given a six-month sentence on May 11, 2001. Because of his age, Mr. Perez was sent to boot camp. However, after he reported to a boot camp counselor that he was experiencing hallucinations and hearing voices telling him to quit or escape, Mr. Perez was transferred to the Oakland County Jail in June 2001. When Mr. Perez arrived at the jail, he was met by defendant Roberta Rice, an inmate caseworker. Mr. Perez told Ms. Rice that he had been hearing voices for the past two years telling him to hurt himself, but he did not listen to the voices. He also stated that he had tried to hang himself at the ages of 14 and 17.

Ms. Rice determined that Perez should get a psychiatric evaluation, and he was seen by Dr. Sarath Hemachandra on July 5, 2001. Dr. Hemachandra noted Mr. Perez's history of hearing voices and considering suicide, as well as his prior diagnoses and treatment, and he diagnosed schizoaffective disorder, a personality disorder, and a learning disorder. He prescribed psychiatric medication, individual counseling, and substance abuse counseling. He also noted that Mr. Perez should be watched closely. Mr. Perez was placed on a 30-minute active behavior watch (ABW), based on the assessments of Ms. Rice and Dr. Hemachandra. He met with Ms. Rice a few times until his discharge from the facility on October 9, 2001. On at least one occasion, after Mr. Perez told Ms. Rice he was suicidal, felt as though was going crazy, and was considering hurting himself by cutting his wrist with a razor or hanging himself with a sheet, Ms. Rice placed him on an active suicide watch within the facility. She also assigned Mr. Perez at various times to reside within the main jail and sometimes in front of holding tanks so that he could be closely supervised.

Mr. Perez was incarcerated at the Oakland County Jail two more times, in April and August 2002. Between his April and August incarcerations, he received treatment at St. Joseph Mercy Hospital and the North Oakland Medical Center (NOMC) for depression, suicidal thoughts, and a report of hearing voices telling him to hurt his sister and break into a restaurant. Two petitions

for hospitalization had at that time been prepared on his behalf, both indicating a diagnosis of schizophrenia.

On October 24, 2002, Mr. Perez returned to the Oakland County Jail after violating his probation. Early in the morning on October 25, 2002, he told an officer that he was hearing voices and wanted to speak to a counselor. He said he did not feel suicidal. A half hour to an hour later, he attempted suicide by tying his pants around his neck and attaching them to the bars of his holding cell. A deputy placed Mr. Perez in an observation cell on active suicide watch (ASW) status. Ms. Rice came to see him, and she continued the suicide watch. When Mr. Perez saw Dr. Hemachandra on an emergency basis that day, he told him that he had attempted suicide because he wanted to see a counselor and obtain his prior medications (Lithium and Zyprexa) sooner. Dr. Hemachandra prescribed these medications and recommended that Mr. Perez be kept under close supervision.

Ms. Rice and Dr. Hemachandra met with Mr. Perez a few more times, during which he reported variously that he felt better and that he had lied about symptoms in the past to get medication. He then asked for a particular cell assignment that would allow him to study. Mr. Perez was seen as manipulative at times. On November 8, Dr. Hemachandra noted that Mr. Perez reported having lied in the past about hearing voices. The doctor did not find evidence of suicidal intent at that time, but prescribed Zyprexa and Lithium. On November 18, Ms. Rice met with Mr. Perez to see if he could be approved for single-cell housing because he had been stealing from cell mates. He had not been taking his medication but said that he was not suicidal. Ms. Rice approved his placement in a single cell without supervision. On November 19, 2002, Ms. Rice and Dr. Hemachandra reviewed Mr. Perez's case. Consistent with jail protocol, because Mr. Perez had not been taking his medication, the doctor discontinued them.

On November 22, sometime between evening clock rounds, according to other inmates, Mr. Perez placed a sheet over his cell bars and hanged himself with a bed sheet tied to a vent. As a result, he died on November 26, 2002. He was not on any kind of special watch at the time of the hanging.

On January 14, 2003, Mr. Perez's father brought an action with respect to these events in the district

court. The claim eventually involved Oakland County, its jail personnel, and Dr. Hemachandra and Ms. Rice as defendants. The senior Mr. Perez argued that the defendants violated his son's Eighth Amendment right to be free from cruel and unusual punishment.

Following discovery, all defendants filed motions for summary judgment. The senior Mr. Perez filed a brief in opposition to these motions, but the district court granted summary judgment for the defendants. The father then appealed to the Sixth Circuit Court of Appeals.

Ruling and Reasoning

The U.S. Sixth Circuit Court of Appeals affirmed the lower court's decision of summary judgment in favor of the caseworker and the county. The father argued that the district court was correct when it found that there was a genuine issue of material fact as to whether Ms. Rice acted with deliberate indifference in violation of his son's Eighth Amendment rights, but that the court had erred when it found that Ms. Rice was nonetheless entitled to qualified immunity.

Regarding the claim involving deliberate indifference, the court articulated that liability is only imposed on prison officials who are deliberately indifferent to prisoners' medical needs as to "unnecessarily and wantonly inflict pain" (*Horn v. Madison County Fiscal Court*, 22 F.3d 653, 660 (6th Cir. 1994)). The court of appeals analyzed "deliberate indifference" looking at both an objective and a subjective component. In cases involving an inmate's medical needs, the need "must be, objectively, 'sufficiently serious.'" (*Farmer v. Brennan*, 511 U.S. 825, 834 (1994)). In considering the subjective component, the court noted its prior emphasis on the need for evidence that the prison official not only subjectively perceived facts from which to infer substantial risk, but also that he in fact drew the inference and then disregarded the risk. The court cited *Farmer* as saying, "Deliberate indifference requires a degree of culpability greater than mere negligence, but less than 'acts or omissions for the very purpose of causing harm or with knowledge that harm will result'" (*Farmer*, p 835).

The court of appeals commented that the case was a difficult one, but ruled that the objective component could be met because Mr. Perez posed a strong likelihood of another suicide attempt, based in part on his prior threats and attempts of suicide, along

with his intermittent need to be on suicide watch, his failure to take his medication, and expert testimony indicating that persons with schizophrenia who have attempted suicide in the past are more likely to attempt suicide again. Though the court recognized Dr. Hemachandra and Ms. Rice's assessments indicating that Mr. Perez had denied suicidal intent around the time of his death, the court found that there was a question of fact remaining, when viewed in the light most favorable to the plaintiff. Furthermore, Ms. Rice had on several occasions placed Mr. Perez on an elevated watch status, which was evidence to the court that she had subjective knowledge that he posed a risk of suicide, and there remained a question of fact regarding whether she knowingly disregarded this risk by moving him to single-cell housing on November 18, 2002.

The court next considered the qualified-immunity doctrine protecting government officials from liability from civil damages. To evaluate the qualified-immunity defense, the court first determined whether the official violated a constitutional or statutory right, which the court noted had already been determined through its opinion that there was a genuine question of fact as to the Eighth Amendment claim.

In the second step in the qualified-immunity test, the court determined whether the right violated was "clearly established at the time of the violation." The court noted that the determination of whether a right is clearly established is based on whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted. The court found that Ms. Rice was entitled to qualified immunity, because no law existed that would clearly establish for a person in her position that she had violated Mr. Perez's Eighth Amendment rights. The court noted that the senior Mr. Perez would have had to prove that his son's right to have his serious medical needs treated without deliberate indifference encompassed a right to a correct assessment of his suicide risk or an effective suicide-monitoring arrangement. Further, the court recognized that case law by October 2002 established that inmates have no general right to be correctly screened for suicidal tendencies. The court acknowledged Ms. Rice's poor judgment in having made critical decisions based on her own assessments of Mr. Perez despite

a lack of an advanced psychiatry or psychology degree, but felt that those errors made her liable for negligence via a tort claim, not an Eighth Amendment claim.

In a final analysis, the court of appeals also agreed with the district court's finding that the senior Mr. Perez failed to show a genuine issue of fact as to whether the county demonstrated deliberate indifference by allowing case workers like Ms. Rice to make housing decisions that could affect inmates' medical needs. The court recognized that though there may be a valid negligence claim against the county, the finding of negligence would not meet a deliberate indifference standard.

Discussion

In *Perez v. Oakland County*, the Sixth Circuit Court of Appeals affirmed the lower court's decision of summary judgment in favor of the caseworker and the county, ruling on the question of deliberate indifference in the correctional setting. The court found that there remained a question of fact as to whether the caseworker met the objective and subjective standards, having been aware of Mr. Perez's potential for self-harm. However, when tackling the question of qualified immunity, the court ruled that Ms. Rice was entitled to this protection, because no law existed that would clearly establish for a person in her position that she had violated Mr. Perez's Eighth Amendment rights (i.e., correct suicide risk assessments are not guaranteed by law).

Some may view the actions of the clinicians in this case as ostensibly adequate or appropriate, given the clinical presentation of the deceased. The court considered this case to be close regarding deliberate indifference. Thus, when placed within the context of a strict and narrow legal interpretation, courts often yield different results than one might expect. The facts presented in this case underscore the difficulty of practicing correctional psychiatry, given a complex system of care with competing interests. Furthermore, the correctional psychiatry environment often places the psychiatrist in a diagnostic conundrum, having to differentiate character pathology from Axis I psychopathology, while considering risks and conforming to the policies of the institution in which one practices.

Death Penalty Mitigation

Sara Beszterczey, PhD

Postdoctoral Fellow in Forensic Psychology

Albert J. Grudzinskas, Jr, JD

Clinical Associate Professor of Psychiatry

Law and Psychiatry Program

Department of Psychiatry

University of Massachusetts Medical School

Worcester, MA

Future Likelihood of Making a Positive Contribution to Society (Rehabilitation) Considered Mitigating Evidence in Capital Sentencing

In *Ayers v. Belmontes*, 127 S. Ct. 469 (2006), the United States Supreme Court reviewed the decision of the Ninth Circuit Court of Appeals that overturned the death sentence of a California man (Fernando Belmontes) convicted of murder. The Ninth Circuit held that Mr. Belmontes' Eighth Amendment right to present all mitigating evidence in his capital sentencing proceeding was violated by jury instructions that, he alleged, precluded the consideration of his evidence that he would make a positive contribution to society if permitted to live. On *certiorari*, the U.S. Supreme Court, in considering the totality of the circumstances of the penalty phase of the trial and the Court's rulings in two other cases it deemed relevant, held that there was no reason to believe the jury had been prohibited from considering all of the mitigating evidence presented in deciding the sentence. The Court reversed the Ninth Circuit's ruling and remanded the case for further proceedings.

Facts of the Case

In 1982, Fernando Belmontes was convicted in a California state court of first-degree murder. In the sentencing phase of his trial, Mr. Belmontes offered mitigating evidence to demonstrate that, in the future, he "would make positive contributions to society in a structured prison environment" if incarcerated rather than executed. Specifically, he presented evidence that during a previous incarceration under the California Youth Authority (CYA), he had "behaved in a constructive way" by converting to Christianity and by "working his way to the number two position on a fire crew" in the CYA fire camp. Although he acknowledged that his religious commitment had dwindled following his release, Mr. Bel-