

Discussion

California's SVP Act was intended to identify a small but dangerous group of sexually violent predators for civil commitment proceedings following their release from prison. The constitutional question in this case is whether individuals whose original convictions have been reversed during custody are being treated differently than those subject to general civil commitment statutes. The court examined *Jackson v. Indiana*, 406 U.S. 715 (1972), and its California equivalent, *Conservatorship of Hofferber*, 616 P.2d 836 (Cal. 1980), which outlined several principles: generally speaking, no individual or group when being civilly committed may be denied substantive or procedural protections that are provided to the population as a whole; on the other hand, the legislature may make reasonable distinctions between its civil commitment statutes based on a showing that the persons are not similarly situated, meaning that those who are reasonably determined to represent a greater danger may be treated differently than the general population; and in particular, those who are criminally convicted may be distinguished, at least initially, from the general population for civil commitment purposes because their criminal acts demonstrate that they potentially pose a greater danger to society than those not in the criminal justice system. With these principles in mind, the question becomes whether Mr. Smith was being treated differently from those who are subject to the state's general civil commitment statute, and if so, whether that differential treatment was reasonable. On the one hand, convicted persons can be treated differently than nonconvicted persons under the SVP Act because these individuals have been adjudicated to be more dangerous than the general population. In other words, differential treatment for this group does not violate the equal protection clause of the Fourteenth Amendment. On the other hand, as the court proposed, in terms of potential dangerousness, a person whose felony conviction has been reversed is in the same position as someone who has been charged with, but not convicted of, a felony offense. It is undisputed that the latter could not be subject to SVP proceedings. Therefore, why should someone with a reversed conviction be subject to SVP commitment hearings? The court's decision in this case that section 6601(a)(2) violates equal protection terms if it were to be extended to reversed convictions demonstrates that individuals with reversed convictions

cannot be treated differently than the general population. The court ruled that given the constitutional concerns outlined, it did not construe California's statute as currently written to apply to reversed convictions. In the future, however, it could be possible for the legislature to amend the SVP Act so that it would constitutionally apply to individuals with reversed convictions, as long as a distinction is specifically made in the statute that this particular population is more dangerous than the general population.

Court-Mandated, Long-Acting Antipsychotic Medication as a Condition of Supervised Release

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The Fourth Circuit Court of Appeals Approves the Order of Forced Intramuscular Medication as a Condition of Release

In *United States v. Holman*, 532 F.3d 284 (4th Cir. 2008), the U.S. Court of Appeals for the Fourth Circuit upheld a district court ruling mandating involuntary long-acting antipsychotic medication as a condition of supervised release. In issuing its opinion, the court considered the interpretation of the Federal Sentencing Guidelines in light of *Washington v. Harper*, 494 U.S. 210 (1990), and *Sell v. United States*, 539 U.S. 166 (2003). In November 2008, the U.S. Supreme Court denied *certiorari* on appeal (*Holman v. United States*, 129 S. Ct. 522 (2008)).

Facts of the Case

Philip A. Holman pleaded guilty to various drugs and weapons charges in 1993 and 1996. While serving his sentence for the 1993 charges, he displayed symptoms that ultimately led to a diagnosis of schizoaffective disorder, bipolar type. During his time in prison, Mr. Holman vacillated in his compliance with treatment, including oral antipsychotic medication. Pe-

riods of treatment refusal lead to recurrence of his symptoms. In 1997, Mr. Holman was involuntarily committed to a psychiatric prison facility.

After several months of his noncompliance, prison officials convened an “involuntary medication hearing” in June of 2003, consistent with the due process provisions outlined in *Washington v. Harper*, and decided to allow involuntary medication of Mr. Holman with antipsychotic drugs. By late 2003, his condition deteriorated and he voiced suicidal and homicidal threats, prompting the administration of risperidone in its long-acting, injection formulation. While on injections and oral antipsychotic medication, he was released in September 2004 after serving his prison term. His prison psychiatrist recommended that he continue the injections “to prevent [him] from succumbing to the temptation to stop taking the tablets.” He was then treated in the community with oral risperidone.

The conditions of his supervised release did not require mental health treatment. Mr. Holman’s probation officer filed a petition regarding the treatment, and in March 2005, the court ordered Mr. Holman to comply with his treatment plan, including all medication. The order specifically required the use of intramuscular injections of risperidone as recommended by his prison psychiatrist.

After the hearing but before the court order, Mr. Holman disappeared. After losing contact with his family for several weeks, he was found wandering aimlessly in a partially catatonic state and arrested. After his competence was restored, he was sentenced to 11 months for violating the terms of his conditional release. He was then released under the same supervised guidelines for 49 months. However, only a few months after his release Mr. Holman once again refused to take his prescribed medication, and his parole officer issued a petition regarding the violation. Mr. Holman was arrested, found incompetent, restored, and then given one year’s imprisonment with 37 months of supervised release under the same conditions as those of the previous release.

Mr. Holman appealed his sentence, objecting to the required administration of long-acting, intramuscular, antipsychotic medication, but not to the other guidelines, including that he comply with oral antipsychotic medication. He argued against the medical necessity of the injections and that less intrusive alternatives would suffice. He purported that the special condition of the supervised release vio-

lated his constitutionally protected liberty interest in refusing the injections.

Ruling and Reasoning

The 4th Circuit Court of Appeals affirmed the ruling of the lower court. District courts are required to impose certain conditions with supervised release and are permitted to impose other measures under 18 U.S.C.A., § 3583(d). The district courts “have broad latitude” regarding implementing special conditions of supervised release and the appeals court, after examination, ruled that there was no abuse of discretion by the district court in this case. The court ruled that the record clearly reflects that Mr. Holman was a danger to himself and others when off his medication. The appeals court contended that the involuntary medication requirement (1) was reasonably related to the need to protect the public, (2) was providing Mr. Holman with effective and proper medical care, and (3) was the least intrusive way to further these important governmental purposes. Mr. Holman argued that application of the § 3583(d) requirements did not address his fundamental liberty interest in refusing dangerous, personality-altering medications.

The court weighed the strength of § 3583 against existing case law, especially *Sell v. United States*. *Sell* requires that an order for involuntary medication meet a compelling governmental interest, whereas § 3853 requires only a reasonable relationship to one of several sentencing goals. In addition, the statute requires that the condition of supervised release be no more restrictive than reasonably necessary, while *Sell* demands that the least intrusive means be utilized. Finally, the court ruled that the special condition of involuntary medication was consistent with the due process requirements set out by the U.S. Supreme Court in *Harper* and *Sell*.

Discussion

Under the Due Process Clauses of the Fifth and Fourteenth Amendments, individuals have a protected liberty interest in avoiding involuntary administration of antipsychotic drugs. While considering the constitutionality of involuntary medication, there is a governmental interest in the protection of the individual and others from the individual’s dangerous behavior (*Riggins v. Nevada*, 504 U.S. 127, 134–5 (1992) and *Harper*, pp 225–6). Safety is a predominant reason to order involuntary medication; however, a nondangerous person can also be

involuntarily medicated, such as to restore capacity to stand trial.

Mr. Holman's volatile behavior when noncompliant with medication led the appeals court to rule that he was a danger to himself and others and to affirm the order of the district court. The other option the court considered in disposition of Mr. Holman was imprisonment. This plan of action, however, continued to place him at a risk to himself and the staff of the facility, as evidenced by his behavior while incarcerated. Placing him in the least restrictive environment for treatment is mandated by *Sell*, which supports supervised release in lieu of incarceration. Before the onset of symptoms, Mr. Holman was charged with drugs and weapons violations in which he was convicted. It could be argued that even if optimally treated, he might still be dangerous to others based on his legal history.

This case represents an extension of legally recognized situations that constitutionally permit involuntary psychiatric medications. While *Harper* provides the requirements for involuntary medication in prison and *Sell* outlines the requirements for involuntary medication to restore competence to stand trial, the present case outlines the guidelines for involuntary medication as a condition of supervised release. If this expansion continues, future cases may examine the use of involuntary medication for potentially dangerous patients in nonforensic populations as a condition for outpatient treatment upon release from a psychiatric hospital.

Supervision for Convicted Sex Offenders

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Abel Assessment of Sexual Interest Accepted as a Condition of Supervised Release of Sexual Offenders

The Abel Assessment for Sexual Interest (AASI-2), a screening tool for deviant sexual interests that mea-

sures visual reaction time, requires a test subject to view slides of clothed persons of varying ages and sexes, so that the person's level of sexual attraction can be rated. The length of time an individual views a particular slide determines the individual's sexual interest for different groups of people, both adults and children. The AASI-2 is widely mandated by U.S. courts as a condition of sex offender supervised release. Abel, penile plethysmography (PPG), and polygraph examinations are used to determine whether a sex offender is at heightened risk of reoffending.

In *United States v. Stoterau*, 524 F.3d 988 (9th Cir. 2008), Joseph Stoterau filed an appeal regarding the terms of supervised release ordered by the U.S. Central District Court of California. The court mandated that upon release from prison, Mr. Stoterau would be subject to Abel testing as a condition of his supervised release. Among several claims, Mr. Stoterau petitioned the Ninth Circuit Court of Appeals to remove the AASI-2 testing requirement. Mr. Stoterau argued that the district court had erred in mandating Abel testing without articulating on the record at sentencing its reasons for imposing such condition. He also contended that Abel testing is too unreliable to be reasonably related to the goals of supervised release.

Facts of the Case

In December 2005, Joseph Stoterau, then 26, met J.D. at a gay and lesbian support group. J.D. was 14 at the time. In July 2006, Mr. Stoterau introduced J.D. to rentboy.com, a website that advertises gay male escorts. Mr. Stoterau then persuaded J.D. to pose for nude photographs, with the understanding that they would be uploaded to the website "to make some money." Mr. Stoterau posted J.D.'s photographs along with his mobile phone number and acted as an intermediary between the young man and potential clients. The record indicates that Mr. Stoterau drove J.D. to his sexual encounters, gave him alcohol, and paid him a portion of the \$250 he charged, while keeping the rest for himself.

On August 4, 2006, officers from Immigration and Customs Enforcement executed a search warrant on Mr. Stoterau's residence and seized his personal computer. While examining the computer's hard drive, officials discovered images of child pornography. On October 30, 2006, in the United States District Court for the Central District of California,