

Adjudicating Dangerous and Incompetent Defendants: Civil or Criminal?

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The Ohio Supreme Court Held That the Commitment of a Criminal Defendant Adjudicated Incompetent to Stand Trial and Unlikely to Regain Competency Is Considered a Civil Proceeding, Such That Criminal Due Process Protections Are Not Constitutionally Required

In Ohio, certain defendants accused of violent felonies and found permanently incompetent to stand trial within statutory time limits may be involuntarily committed under statute Ohio Rev. Code Ann. § 2945.39 (2002) for a maximum duration of what their criminal sentence would have been if convicted. In *State v. Williams*, 930 N.E.2d 770 (Ohio 2010), the Supreme Court of Ohio deemed that involuntary commitment under Ohio Rev. Code Ann. § 2945.39 is constitutional and does not violate equal protection or due process. Further, the court ruled that proceedings under Ohio Rev. Code Ann. § 2945.39 are civil, not criminal. Thus, persons committed under the statute are not entitled to the constitutional rights afforded to defendants in criminal proceedings.

Facts of the Case

In 2005, Theonex Williams was indicted for rape. The trial court found him incompetent and committed him to a hospital for competency restoration. After a year of treatment, his mental health providers opined that he was not likely to be restored to competency within the statute of limitations. The state moved for the trial court to retain jurisdiction under Ohio Rev. Code Ann. § 2945.39, thus extending involuntary commitment. Mr. Williams moved for

dismissal of his indictment, arguing that further commitment violated due process and equal protection.

The trial court denied his motion, and, per statute, held a special hearing to determine whether Mr. Williams had committed the alleged offenses. It found clear and convincing evidence that he had, permitting continued commitment under Ohio Rev. Code Ann. § 2945.39. Mr. Williams appealed, again claiming violations of equal protection and due process and asserting that he was not afforded the level of procedural due process normally given to criminal defendants. The Ohio court of appeals reviewed his case and sustained all three of Mr. Williams' arguments. The state appealed to the Ohio Supreme Court.

On October 20, 2009, the supreme court accepted the appeal to consider three questions: 1) Is involuntary commitment under Ohio Rev. Code Ann. § 2945.39 civil or criminal? 2) Do such commitments violate equal protection? and 3) Do such commitments violate due process? On June 8, 2010, the court reversed the appellate court's ruling, determining that proceedings under Ohio Rev. Code Ann. § 2945.39 are civil and do not violate equal protection or due process rights.

Ruling and Reasoning

In addressing the question of whether Ohio Rev. Code Ann. § 2945.39 is civil or criminal, the court invoked the intent-effects test used in *State v. Cook*, 700 N.E.2d 570 (Ohio 1998) and *Kansas v. Hendricks*, 521 U.S. 346 (1997). This two-pronged test first considers whether the legislation's intent is criminal (penal) or civil (remedial). If criminal, the test ends; if civil, the next step is to examine the legislation's actual effects. A civilly intended statute "may still be determined to be punitive and criminal if its effects negate a remedial intention."

Using this test, the court determined that Ohio Rev. Code Ann. § 2945.39 is a civil and not a criminal statute. First, the court noted that the statute explicitly states that its predominant intent is to protect public safety. Second, the court reasoned that the statute implicates neither retribution nor deterrence, the primary goals of criminal punishment. Retribution is not implied, because culpability is not an issue in any of the proceedings, none of which require a finding of *scienter*. Although the statute directs a hearing to determine whether the defendant com-

mitted the accused offenses, the hearing is not conducted to affix culpability, but to determine whether the defendant meets the statute's dangerousness criterion. Deterrence is not implied, because the persons to whom Ohio Rev. Code Ann. § 2945.39 would apply, "mentally ill persons in need of hospitalization," are not considered rational agents able to tailor their own behavior when threatened with punishment. The court found that further evidence for the statute's nonpunitive intent could be seen in its provisions for least restrictive confinement conditions and early release if the committee was found no longer to be dangerous.

The second prong of the intent-effects test examined whether the effects of the statute provide evidence of punitive outcomes, despite nonpunitive intent. The court did not find any such evidence, thereby concluding that Ohio Rev. Code Ann. § 2945.39 is a civil statute.

Next, the court considered the question of whether Ohio Rev. Code Ann. § 2945.39 violated Mr. Williams' constitutional right of equal protection. The court applied a "rational basis" standard of review, that "a statute that does not implicate a fundamental right or a suspect classification does not violate equal protection principles if it is rationally related to a legitimate government interest" (*Williams*, p 778).

The court determined that the requirement of a hearing under Ohio Rev. Code Ann. § 2945.39 was not an equal-protections violation, as this requirement actually confers additional protection to the defendant against involuntary commitment by excluding defendants determined not to have committed criminal acts. In addition, the court determined that other differences between Ohio Rev. Code Ann. § 2945.39 and civil commitment under the probate code were justified by a rational basis. Defendants committed under Ohio Rev. Code Ann. § 2945.39 have been determined to have recently committed a violent felony and thus are considered particularly dangerous and justly subject to more restrictive conditions.

Next, the court turned to the question of whether commitment under Ohio Rev. Code Ann. § 2945.39 violated Mr. Williams' due process rights. Mr. Williams argued that under Ohio Rev. Code Ann. § 2945.39, he was being held involuntarily beyond the statute of limitations for competency restoration. This commitment appeared to violate principles of due process set forth in *Jackson v. Indiana*, 406 U.S.

715 (1972), which limited the duration of commitment to a "reasonable period of time necessary to determine whether there is substantial probability" to regain competency. Mr. Williams also invoked *State v. Sullivan* (739 N.E.2d 788 (Ohio 2001)), which explicitly noted that there was no "rational basis" to continue involuntary commitment for purposes of competency restoration, once the committee was deemed not restorable, as was Mr. Williams.

The court dismissed this line of reasoning by noting that the primary purpose for Mr. Williams' commitment under Ohio Rev. Code Ann. § 2945.39 was not treatment to restore competency, but public protection. Thus, with public safety in mind, there was a "rational basis" to continue involuntary commitment, even though competency restoration was unlikely.

Discussion

How should the judicial system handle mentally ill defendants who have committed violent acts, but cannot be convicted due to incompetency to stand trial? Typically, such persons are involuntarily committed to a psychiatric institution by court order to attempt competency restoration. If competency restoration after a "reasonable period" is judged unlikely, then, by principles of due process articulated in *Jackson v. Indiana* and *State v. Sullivan*, the defendant cannot continue to be held. Is society not endangered by the release of potentially violent persons?

Ohio Rev. Code Ann. § 2945.39 is the Ohio legislature's attempt to deal with this issue, balancing on the one hand the civil liberties of individuals who have not been convicted of a crime and on the other hand, public safety. First, it authorizes a judicial hearing to ascertain whether the defendant committed the crimes in question, with the goal of distinguishing dangerous from nondangerous individuals. Should such hearings be considered criminal proceedings or civil? This distinction is of great import, as criminal defendants are afforded a considerably higher level of procedural due process, including the right to a jury trial and the state's burden of proof beyond a reasonable doubt. Civil proceedings, on the other hand, have fewer protections and employ standards of proof lower than reasonable doubt (*Addington v. Texas*, 441 U.S. 418 (1979)).

In a 3–2 opinion, the Ohio Supreme Court found proceedings under Ohio Rev. Code Ann. § 2945.39 to be civil and constitutionally valid, using argu-

ments that echo *Kansas v. Hendricks*. However, the dissent noted several features in the statute that supported a finding that its proceedings are criminal. One was that committed persons under Ohio Rev. Code Ann. § 2945.39 remain under pending indictment for the duration of their commitment, suggesting that proceedings under the statute occur as part of the criminal case. Another is that the statute ties the maximum length of commitment to the maximum prison sentence the defendant would have received if convicted, suggesting punitive intent. The majority opinion discounted this fact, noting that earlier release is allowed if the defendant is deemed no longer “mentally ill and subject to hospitalization.” However, unlike release from civil commitment under Ohio’s probate code, which requires only the authorization of the chief medical officer, release from commitment under Ohio Rev. Code Ann. § 2945.39 is considerably more onerous, requiring submission of an application by the chief clinical officer to the court, an independent review by a local forensic center, and ultimately, a court order. Given political disincentives to early release of individuals who could be perceived as potentially dangerous, it remains an open question whether the early-release option would ever be exercised. If not, Ohio Rev. Code Ann. § 2945.39 would fail the effects prong of the intent-effects test, lending support to the view that the statute is criminal. One could then further argue that future re-indictment in the event of competency restoration would amount to a violation of the constitution’s Double Jeopardy Clause.

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A Victim’s Right to Privacy Versus the Defendant’s Right to a Fair Trial

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Iowa Supreme Court Determines Victim’s Mental Health Records Are Admissible to Support a Defendant’s Plea of Self-defense

In *State v. Cashen* (789 N.W.2d 400 (Iowa 2010)), the Iowa Supreme Court devised a protocol to permit appellee Ross Cashen to access the victim’s mental health records for his self-defense claim. The court vacated the appellate decision, affirming in part the district court’s judgment, stating that the defendant presented compelling evidence that the victim’s mental health records provided exculpatory evidence that would aid in his defense. The court also reversed the district court in part, stating that obtaining the mental health records by way of a patient’s waiver is not permissible. Accordingly, the court developed and outlined a protocol for the party seeking access. Under this new protocol, there is limited disclosure of information, which can be used for discovery. This part of the decision was remanded to the district court with instructions.

Facts of the Case

On April 18, 2007, the state charged Ross Cashen with his third offense of domestic assault and willful injury, Class D felonies, against his former girlfriend, Chastity Schulmeister. Mr. Cashen filed a notice of self-defense, asking the court to allow an expert to review, interpret, and testify to the victim’s “propensity of violence” based on her mental health records. This motion was denied pending a decision on admissibility.

Mr. Cashen deposed the victim, during which she admitted to past abusive relationships and being diagnosed with posttraumatic stress disorder, anxiety, and depression, for which she had been in therapy since age 15. She reported a history of impulsivity and reactive behaviors and difficulty with frustration tolerance with regard to Mr. Cashen. During the deposition, Ms. Schulmeister admitted to taking antidepressants currently and during her relationship with Mr. Cashen because of her anxiety about his “safety and welfare” in the armed forces and her belief that he was violent.

Mr. Cashen filed a motion to obtain the victim’s mental health records, which was denied. He then hired a private investigator to obtain them. Having learned of this, the state filed a motion to suppress the records and exclude any previous mental health records. The district court denied the state’s motion, stating that the victim’s “propensities for violence