

Discussion

In this case, the Third Circuit Court of Appeals balanced an individual's right to avoid unwarranted psychotropic medications against the state's interest in forcing medications to limit dangerousness. It emphasized that medical professionals should handle decisions regarding medical treatment and reaffirmed the district court's decision to medicate individuals forcibly only for imminent dangerousness. The distinction between active civil committees and patients on CEPP is logical, given that no currently dangerous person would be ordered to CEPP status and patients on CEPP are not currently committable by ordinary standards. The court summed it up this way:

In implementing the Policy, the State of New Jersey discharged one of its most important and daunting responsibilities: the care and custody of people too mentally ill to live in freedom. New Jersey determined that, while judges have an important role to play in the civil commitment process, matters of medical treatment are more appropriately handled by medical professionals [*Disability Rights*, p 310].

We agree that the court's nuanced reasoning will advance these adjudications.

Disclosures of financial or other potential conflicts of interest: None.

## Retention of the Court's Jurisdiction after Conditional Release of Individual Found Not Criminally Responsible

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### The Court Retains Jurisdiction for a Reasonable Time When Faced With Extending a Conditional Release Order Beyond its Original Expiration, Without Necessarily Violating Due Process

In *Harrison-Solomon v. State*, 112 A.3d 408 (Md. 2015), Aaron Harrison-Solomon was found guilty but not criminally responsible for various crimes and

committed to the Department of Health and Mental Hygiene. The department filed for a four-year extension five days before expiration. Meanwhile, he was released on an order of conditional release (OCR). Approximately two months later, the court granted the department's application to extend his previous OCR, and denied his petition to alter or amend it. He then appealed to the Maryland Court of Special Appeals, which affirmed the lower court's decision. Finally, he petitioned for a writ of *certiorari*, and the Maryland Court of Appeals also affirmed the extension.

#### Facts of the Case

On June 15, 1999, Mr. Harrison-Solomon pleaded guilty to two counts of second-degree assault. The Circuit Court of Prince George's County found him not criminally responsible, committing him to inpatient treatment within the Department of Health and Mental Hygiene. After nine months, he was released on a three-year OCR. The OCR outlined specific guidelines: for example, that he remain on medications, reside with his mother, submit to urine drug screens, and receive his therapist's written approval for various decisions.

On December 21, 2001, Mr. Harrison-Solomon was again indicted, this time for attempted murder, armed robbery, and weapon offenses. Consequently, the circuit court rescinded his previous OCR and recommitted him to inpatient treatment. On December 12, 2002, a jury found him not criminally responsible.

In July 2006, an Administrative Law Judge (ALJ) conditionally released Mr. Harrison-Solomon. The facial duration of this order was through July 3, 2011. Slightly over three years after the conditional release, the state petitioned to revoke his OCR because he had violated its guidelines. The state's petition was granted, and Mr. Harrison-Solomon was once again committed to inpatient treatment.

On June 15, 2010, the circuit court ordered Mr. Harrison-Solomon's release per an ALJ's recommendation. The ALJ found that even though Mr. Harrison-Solomon had violated the 2006 OCR, at the present time, he did not appear to pose a threat to himself or others. Accordingly, Mr. Harrison-Solomon was released conditionally for the remaining duration of the 2006 order.

Five days before the expiration of the 2006 OCR, the state filed for an application to extend it by four

years. The state also submitted a physician's examination noting perfect attendance and compliance with treatment recommendations. However, during the evaluation, Mr. Harrison-Solomon stated that he intended to abandon psychiatric treatment so that his mind would be "free to think." The physician recommended against terminating the OCR. The application for a four-year extension was granted without a hearing, nearly two months after the facial expiration of the 2006 OCR.

Mr. Harrison-Solomon contended that, because his OCR had expired, the court no longer maintained jurisdiction over him. The state's position was that the application was filed before the expiration date and thus was valid.

On November 10, 2011, the circuit court held that Maryland CP § 3-122 did not impose a mandatory deadline or timeline for the court to rule on an application that was timely filed. On these grounds, the court denied Mr. Harrison-Solomon's motion. He then appealed to the Maryland Court of Special Appeals, arguing that the circuit court's order to extend was in fact not an extension but a "revival," given its earlier expiration. The special appeals court affirmed the lower court, citing the Maryland legislature's intent and an Illinois decision. The court held that, considering that the application was filed before the expiration, the court would retain jurisdiction over the case. Mr. Harrison-Solomon was granted a writ of *certiorari* by the Maryland Court of Appeals.

#### *Ruling and Reasoning*

The Maryland Court of Appeals affirmed both lower courts' rulings. Justice Harrell delivered the opinion of the court, which took into consideration two aspects of the case: the intent of the Maryland legislature and due process requirements. Examining the text of Md. Code Ann., Crim Proc. § 3-122 (2008), the court examined the use of various terms in the statute, such as "anytime," "shall," and "extend." It held that, although extend has been defined as to continue or prolong, the courts often prolong or extend a deadline retrospectively, adding that retrospective extensions are recognized in both Maryland and federal jurisdictions. Anytime is not ambiguous and indicates that the provision is mandatory, the court said. Thus, the Maryland legislature's intent was that the state or department could propose a change to an OCR whenever it felt it necessary, so

long as the proposal was filed during the life of the order. The court recognized that the ruling must be returned within a reasonable time.

The court also considered the legislative history. Regarding a Senate bill that was passed in 1984, the court noted that the state's intention was to make it more difficult for defendants to raise an insanity defense and to make it easier for the state to maintain restrictions on those found not criminally responsible. The state was driven by a desire to ensure protection of the public from inappropriate release and discharge of those found not criminally responsible.

The court reviewed the question of reinstating a condition after a long hiatus, recognizing that, although a conditional release may be necessary, it would in fact limit one's autonomy. To have a period of living without conditions only to be followed by a reinstatement of previously outlined conditions could appear harsh. Mr. Harrison-Solomon had argued that an OCR is similar to a sentence of probation and therefore the end date should be similarly treated. The court responded that, although one may see the cursory similarities, the fundamental purpose, treatment, is different from punishment.

Considering the Fourteenth Amendment's due process clause and its counterpart in Maryland's Declaration of Rights, the court found there to be no violation. It held that the state filed the application within the time frame of the 2006 OCR and that Mr. Harrison-Solomon and his counsel were made aware of the application. The Circuit Court ruled on the application 64 days after its filing, after making attempts to contact both parties to expedite its ruling. Therefore, a decision made on a timely filed application given after the order's expiration does not *ipso facto* violate due process, so long as it is given within a reasonable time. The Maryland Court of Appeals affirmed the judgment of the Court of Special Appeals.

#### *Discussion*

In *Harrison-Solomon*, the court examined procedures for extension of an OCR over a criminal defendant found not criminally responsible. The concern is the time limits of the court's jurisdiction and possible violations of due process. The court held that, as long as the application of extension is filed before the order's expiration, the court would re-

tain jurisdiction. By doing so, the intent of the legislature was interpreted as not to limit the state's ability to impose restrictions on those found to be not criminally responsible. The intent was to avoid jeopardizing the community by the premature release of a patient from a therapeutic environment that may be essential for his recovery and the public safety.

One may argue that the court's having what appears to be continuous and interminable jurisdiction poses a sense of uncertainty for some. It may raise the feeling of absolute control over a person who has been found not criminally responsible and therefore may be burdensome. However, the state has highlighted that there are methods of arguing and challenging those grounds on the basis of a writ of *mandamus* or to seek proactive discharge or termination of the conditions.

One may also question the definition of "reasonable time." The court held that there is no due process violation so long as the decision is given in "reasonable time." Given the extent of some of the conditions of release (for example, Mr. Harrison-Solomon's conditions of needing approval for employment, change of residence, and marriage) one can appreciate his dismay. During the period that the extended OCR was in effect, if the individual had been without conditions, he could have gotten married or become a parent. The continued monitoring and supervision of those released from more restrictive to less restrictive environments is of interest to all parties involved, bringing to light concerns of patients' well-being, autonomy, and constitutional rights, as well as public safety.

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## Court Overturns Death Sentence for Failure to Introduce Defendant's Mental Health History for Mitigation Purposes

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### Defense Counsel Failed to Investigate and Introduce Evidence of the Defendant's Mental Health History During the Penalty Phase

In *Saranchak v. Secretary, Pennsylvania Dept. of Corrections*, 802 F.3d 579 (3d Cir. 2015), the Third Circuit Court of Appeals overturned a death sentence on appeal from the district court's action on a petition for writ of *habeas corpus* claiming ineffective assistance of counsel during the guilt and penalty phases of trial. Although the circuit court found no grounds for ineffective assistance of counsel during the trial's guilt phase, they found that trial counsel's failure to investigate and introduce mitigating factors, including a dysfunctional childhood history and mental health history, amounted to ineffective assistance of counsel during the penalty phase. Accordingly, the defendant's conviction was upheld, but his death sentence was overturned.

#### Facts of the Case

On October 15, 1993, Daniel Saranchak was intoxicated when he and a friend traveled to Saranchak's grandmother's home, where Mr. Saranchak killed his uncle and grandmother. During police interrogation, Mr. Saranchak assumed a militaristic posture and behaved as if interacting with drill sergeants. He reported being present at his grandmother's home on a military mission and claimed that information about his grandmother's death was classified. He admitted to shooting his uncle. While incarcerated pending trial, Mr. Saranchak met with a child services caseworker regarding his minor children, and he provided incriminating details regarding both killings.

Mr. Saranchak's attorney requested a court-appointed psychiatrist to evaluate his competency to stand trial and mental capacity to form the specific intent to kill at the time of the crime. The trial court granted the motion regarding the competency examination, but did not order the examination for diminished capacity. Mr. Saranchak was found competent to stand trial, and his defense attorney later testified that he did not seek the diminished-capacity evaluation, because nothing in the competency report indicated that further examination would be helpful.