Constitutionality of Monetary Bond for Insanity Acquittee Charged with New Crimes at Psychiatric Facility

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Monetary Bond for Acquittee Charged With New Violent Crimes at a Psychiatric Facility Did Not Violate Acquittee's Right to Bail and Pretrial Transfer of Acquittee to the Department of Corrections Did Not Violate Due Process

In *State v. Anderson*, 127 A.3d 100 (Conn. 2015), the Connecticut Supreme Court considered whether a trial court may set a monetary bond as a condition of release when an insanity acquittee in a psychiatric facility is charged with new violent crimes at the psychiatric facility and, if the acquittee is unable to post bond, whether the acquittee may be transferred to the custody of the Commissioner of Correction while awaiting trial for the new charges. The Connecticut Supreme Court answered both questions in the affirmative.

Facts of the Case

Francis Anderson had a long history of incarceration and had previously spent time in a psychiatric hospital. In 2012, for actions that occurred while incarcerated, Mr. Anderson was charged with assault of a corrections officer, breach of the peace, and failure to submit to fingerprinting. For these charges, he was acquitted by reason of mental disease or defect and transferred to the Whiting Forensic Division of the Connecticut Valley Hospital (Whiting) for psychiatric evaluation.

While confined at Whiting, Mr. Anderson engaged in multiple violent acts resulting in several criminal charges. Among these, he was charged with two counts of assault on health care personnel. For most of his charges, Mr. Anderson was released on a promise to appear in court and ordered to return to Whiting.

In April 2014, the state filed a motion for bond review to modify the existing conditions of release. Although Mr. Anderson was confined to Whiting as an insanity acquittee, the trial court determined that it had authority to set a monetary bond upon commission of new offenses, particularly where the safety of others was at risk. After an evidentiary hearing, the court set bond in the amount of $100,000. When Mr. Anderson was unable to post bond, he was transferred to the custody of the Commissioner of Correction with an order that he continue to receive psychiatric treatment. Mr. Anderson filed a motion for stay of the trial court's order and filed an interlocutory appeal to the Connecticut Supreme Court.

In his appeal, Mr. Anderson claimed that the trial court's imposition of a monetary bond and his transfer to the Commission of Correction when he was unable to post bond violated his constitutional rights to bail under the state's constitution and his Fourteenth Amendment right to due process under the federal constitution. Mr. Anderson asserted that the fundamental purpose of bail is to ensure subsequent court appearance and, given his position as an insanity acquittee, his appearance in court was essentially assured.

Ruling and Reasoning

The Connecticut Supreme Court disagreed and affirmed the trial court's order setting a monetary bond. Citing historical precedent, the court determined that the purpose of a bond is for assurance of both the defendant's appearance and the safety of the public. The court stated:

> . . .both prior to and following the adoption of the 1818 [state] constitution, justices of the peace were statutorily authorized to require persons accused of certain disruptive or violent behaviors to provide sureties of "'the peace and good behavior,' and to imprison those who failed to provide the ordered security" (*Anderson*, p 110).

This concept of dual purposes of bail is further reflected in Conn. Gen. Stat. § 54-64a (2011), requiring the trial court, when setting conditions for release, to consider what conditions are reasonably necessary to assure the appearance of the defendant and the safety of others.

In this case, Mr. Anderson was not denied bail, but rather he was unable to post it. The court concluded that the amount of bail was a reflection of the various factors of the case as considered per § 54-64a, includ-

ing "the defendant's mental health, the charges pending against him, the strength of the evidence supporting those charges, the defendant's history of violence and previous convictions, and the likelihood that he would commit another crime if released" (*Anderson*, p 121).

The court further ruled that Mr. Anderson's right to procedural due process was not violated by his transfer to the Commissioner of Correction. Mr. Anderson abandoned his claim regarding substantive due process. The court used the three-pronged balancing test articulated in *Mathews v. Eldridge*, 424 U.S. 319 (1976), to determine whether a person has received procedural due process: the importance of the interest at stake; the risk of erroneous deprivation of the interest because of the procedure; and the probative value of additional procedural safeguards and the government's interest.

Here, Mr. Anderson argued that he had a liberty interest, stemming from his position as an insanity acquittee, to an expectation of treatment in a hospital. The court agreed that he had a liberty interest to appropriate mental health services. However, the court determined that he was afforded adequate procedures and had ample opportunity to contest his transfer. Mr. Anderson had notice of the state's intent, multiple hearings were held at which he was represented by counsel, and he submitted various reports as evidence. Given his history of multiple incidents of violence within a short time frame, the third of the *Mathews* factors was identified as the state's interest in protecting the staff and other patients at Whiting. The court opined that the safeguards used appropriately balanced Mr. Anderson's protected interest with the state's interest.

The court also noted that Mr. Anderson would continue to receive mental health treatment as a pretrial detainee in the correctional facility. He would be eligible to challenge the conditions of his confinement via a writ of *habeas corpus* should he view his psychiatric treatment to be inadequate in the correctional facility.

Dissent

Three judges agreed with Mr. Anderson that imposing a substantial monetary bond on someone who is detained to a psychiatric facility and is conceded not to be a flight risk as such, violated the constitutional right to bail. In their view, this amounted to a "form of preventive detention" (*Anderson*, p 124). The dissenters did not agree that bond could be issued on the basis of his perceived dangerousness. The dissenters did not address due process.

Discussion

The *Anderson* case highlights important legal and policy questions affecting insanity acquittees. It is important to recall that the insanity defense serves as an excuse to the commission of a crime. Public policy has long held that insanity acquittees should not be punished, but rather afforded treatment. In Connecticut, like most jurisdictions, insanity acquittees are typically committed to a psychiatric hospital after their acquittal.

When acquittees exhibit dangerous behavior or commit new criminal offenses while hospitalized, it calls into question how to balance the continued need for public safety versus the individual rights of the insanity acquittees. To some, any effort to disrupt an acquittee's interest in psychiatric hospital treatment is inconsistent with the purpose and policies of the insanity defense. Others recognize the need to protect patients and staff working at psychiatric facilities and that there may be circumstances in which it is appropriate to transfer certain acquittees to a correctional facility. There is no simple solution to balancing these interests, and Connecticut is not alone in considering when an insanity acquittee may be transferred to a correctional facility and under what required procedures (Piel J, Goldenberg E: Washington's Senate Bill 6610 on transferring provisions for persons found not guilty by reason of insanity, *J Am Acad Psychiatry Law* 40:253–60, 2012).

In considering the imposition of a monetary bond, the *Anderson* court weighed interests to both the insanity acquittee and public safety in recognizing that bond serves two purposes: assurance of the defendant's future court appearance and the safety of the public. In this case, the public were staff and other patients at Whiting.

The court similarly balanced interests in evaluating Mr. Anderson's due process claim. It has long been decided that prisoners are constitutionally entitled to procedural protections before involuntary transfer to a psychiatric facility (*Vitek v. Jones*, 445 U.S 480 (1980)). Although it is less clear what procedural protections should be afforded before transfer from a psychiatric facility to a correctional facility, the *Anderson* court made clear that insanity acquit-

tees have a liberty interest in adequate treatment. Although insanity acquittees may face new criminal charges while hospitalized, *Anderson* held that they do have rights that preclude transfer from a psychiatric facility to prison without the necessary due process.

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Application of Qualified Immunity in Patient Death

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State-Run Psychiatric Emergency Room Technicians, Nurses, Doctors, and Supervisors' Entitlement to Qualified Immunity

In *Pena v. Givens*, 2015 WL 7434253 (5th Cir. 2015), Onie Pena, representative of the deceased, George Cornell, sued the treating doctor, nurse, and two emergency room technicians, as well as the hospital supervisors at Parkland Memorial Hospital (Parkland; Dallas, TX), which is operated by the state, alleging violations of Mr. Cornell's Fourth and Fourteenth Amendment rights before his death. In response, the defendants filed a motion for summary judgment on the grounds of qualified immunity, but the United States District Court for the Northern District of Texas denied the motion. The defendants then filed an interlocutory appeal with the Fifth Circuit Court of Appeals, who reversed the district court's decision.

Facts of the Case

In February 2011 after he arrived at a fire station complaining of being chased, police apprehended and transported Mr. Cornell, in accordance with Texas state law, to the Parkland psychiatric emergency room, where the doctor authorized his admission for paranoia; he believed that people had stolen his lottery ticket and were chasing him. During the admission, Mr. Cornell reported he had tachycardia. A technician, took Mr. Cornell's vital signs, which revealed hypertension and tachycardia. The technician attempted to recheck Mr. Cornell's vital signs, but he became agitated and refused cooperation, resulting in no further cardiac treatment. Mr. Cornell then attempted to elope. Two technicians placed Mr. Cornell in a seclusion room and restrained him on the floor for about five minutes (accounts varied on the exact length of the restraint) while the nurse injected Mr. Cornell with haloperidol, lorazepam, and diphenhydramine, to control his behavior.

While alone in the seclusion room, Mr. Cornell became agitated again. He ripped up a vinyl tile from the floor and banged it against the door. Because he had damaged the room, three technicians transferred him to a new room. During the transfer, Mr. Cornell again physically resisted the technicians. They held him on the floor, and he received a second injection of haloperidol, lorazepam, and diphenhydramine. Testimony regarding the length of time the technicians held him was conflicting, although Ms. Pena stated the technicians held Mr. Cornell on his stomach for 15 minutes after the injection. The technicians were trained to not hold a patient prone for more than 1 minute, because of the risk of asphyxiation. After the technicians left the room, a nurse later found Mr. Cornell cyanotic and lying prone on the floor. He was transferred to the main emergency room and pronounced dead. The medical examiner found the cause of death to be undetermined and listed three possible causes: mechanical compression; underlying heart disease; or effects of the medication he received.

In 2008, the Centers for Medicare and Medicaid Services (CMS) sent a letter to the CEO, stating that Parkland's deficiencies in providing medical screening were a serious threat to patients who come to Parkland with emergent medical conditions. A CMS report after Mr. Cornell's incident noted that, at the time of the incident, the nurse's restraint-and-seclusion training had lapsed, and his nursing supervisors should have been aware of this. After Mr. Cornell's death, Parkland was "under near constant surveillance and investigation" by CMS and the Texas Department of State Health Services because of the high number of complaints, injuries, and deaths at the hospital.

Ms. Pena, representing Mr. Cornell's estate, filed a complaint in the Texas district court alleging that