

Competency to Be Executed and Forced Medication: *Singleton v. Norris*

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Singleton v. Norris is a decision by the Eighth Circuit Court of Appeals stating that forced psychotropic medication can be continued after the date of execution is set if the medication had been given previously to prevent the inmate from being dangerous in the prison setting under a *Harper*-type review. The defendant had argued that after the date of execution was set, it was no longer in his medical interests to continue the medication. In the decision, the majority held that the fact that an execution is in the offing does not alter the medical interests for which the medication had been prescribed, and physicians should just continue to treat the medical condition. This decision may raise ethics problems for physicians in such settings, because they may be in violation of the American Medical Association (AMA) Code of Ethics if the original override is dubious.

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The death penalty raises many problems for psychiatry as a profession. A new chapter began in 1986 when the Supreme Court held that executing the insane was a violation of the Eighth Amendment's ban on cruel and unusual punishment.¹ This led the profession to search for guidelines on appropriate and acceptable behavior for psychiatrists who might be called on to evaluate and/or treat death row inmates who become so psychotic after their convictions that they no longer appreciate that they are being punished, why they are being punished, or even that they will die as a result of the execution. Although such individuals remain few in number, the principles are important as they challenge and define the ethical precepts of our work. Both the American Psychiatric Association (APA) and the American Medical Association (AMA) have struggled to give guidance to physicians, and they have worked together to offer a set of guidelines, which remain controversial for some physicians.²

The AMA has defined participation in an execution as unethical,³ and in the early 1990s, they clarified the actions that constituted participation.³ The AMA Council on Ethical and Judicial Affairs (CEJA) stated that forcing medication on a condemned inmate solely to restore competence was unethical.³

*Singleton v. Norris*⁴ relates to the use of forced medication to restore competency to be executed and has the potential to place psychiatrists in the uncomfortable position of balancing competing interests and making difficult judgments for such inmates. The full court opinion of the Eighth Circuit Court of Appeals reverses a smaller panel opinion of that appellate court, which blocked the use of forced medication to restore an inmate to competence so that he could be executed.

Facts and Legal Issues

Charles Singleton was sentenced to death by an Arkansas court in 1979 after his conviction for capital felony murder and aggravated robbery after he stabbed a woman in a grocery store during a robbery. Both the victim and a witness identified him at the scene. He received a sentence of death for the murder and a sentence of life imprisonment for the robbery.

Eight years later, in 1987, he began to deteriorate mentally. He started to believe that his cell was possessed by demons and had "demon blood" in it. He also believed that a prison doctor had implanted a device in his ear and that his thoughts were being stolen from him when he read the Bible. Schizophrenia was diagnosed, and Singleton was placed on antipsychotic medication. Later, he refused the medications and was forcibly medicated. This cycle was repeated several times. Whenever his medications were stopped, he became paranoid and delusional

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and at times would regress even when taking his medication.

In July 1997, he was described as hostile and belligerent. He informed the staff that he “was on a mission from God” and had to kill his treating physician and the President. A month later he expressed the belief that he had been freed by the Eighth Circuit and the U.S. Supreme Court. He was described as nude and “zombie-like.” He tore up his mattress and flushed it down the toilet. The Medication Review Panel decided to medicate him forcibly again under a *Harper*⁵ involuntary medication order because of his dangerousness. In *Harper*, the Court held that, given the requirements of the prison environment, the Due Process clause permits the state to treat a prison inmate, who has a serious mental illness, with antipsychotic drugs against his will, if the inmate is dangerous to himself or others, and the treatment is in the inmate’s medical interest. He improved somewhat for a time but then regressed, and medications were increased.

In March of 2000 he was transferred and evaluated at the Federal Medical Center at Springfield. Regarding his understanding of the punishment at that time, the evaluating psychiatrist stated:

I asked him if he was God, how could he be executed, and he slapped his arm and said I’ve got this. My understanding referring to a body. He could be—he could be executed and that it would—and I think he knew that the reason for the execution would be conviction for the murder of Mary Lou York and by that I believed he had a factual understanding. He could recite—basically recite basic facts that he would be—what the sentence was and why he would be given that sentence.

The other part of it, the rational understanding I think was—has more to do with does he actually understand what this means, not only can he say it but does he actually understand what this means and what it means as applied to him, and it was not at all clear to me that he did. His thinking was so disorganized. He made these frequent comments about being the Holy Ghost or Holy Spirit. He talked about a—some beliefs about a parallel world, about being—an execution [meaning] just . . . stopping breathing and then you start up again somewhere else and that—there was some statement made about correctional officers. Execution correctional officers stop you from breathing and then the judge can do something to start it up again [Ref. 4, p. 1032].

On December 11, 2001, the appellate court received a letter directly from Singleton. In it, he declared that he did not believe Mary Lou York was dead and that she was “somewhere on this earth waiting for me—her groom.” He further stated that “somebody sent me, the robot, to Mrs. York, I know

the police is in it, you could be in it. So, if her service was/is in vain, its because that’s the way you want it” (Ref 4, p. 1033).

In February 2000 Singleton filed a petition for *habeas corpus* arguing that the state could not restore his competency to be executed through use of forced medication and then execute him. The district court denied the petition, finding “no evidence in this record that the actions and decisions of the medical personnel involved were in any degree motivated by the desire, purpose or intent to make Mr. Singleton competent so that he could be executed” (Ref. 4, p. 1022).

The appellate court ordered a limited remand in March 2000 to answer two remaining questions of fact. First, was Singleton competent to be executed (or *Ford*¹ competent, as required by a prior Supreme Court decision that held that the Eighth Amendment to the Federal Constitution prohibits a state from executing a prisoner who is insane? While the majority did not agree on a standard, Justice Powell, in a concurring opinion, expressed the view that the Eighth Amendment prohibits the execution of those who are unaware of the punishment they are about to suffer and why they are to suffer it.) prior to the implementation of the mandatory medication order for dangerousness (*Harper* order) in 1997. Second, would Singleton regress into psychosis and become *Ford* incompetent if he stopped taking the medication? In answer to the first question, the district court found that Singleton was not *Ford* competent at the time the involuntary medication regimen began in 1997. The answer to the second question was less clear. The district court found that Singleton would regress into psychosis without medication, but they could not say with certainty when psychotic symptoms would resume and whether he would become *Ford* incompetent.

The posture of the case changed during the course of the appeal. Singleton was placed under a *Harper* involuntary medication order in 1997. That order was subject to annual review and was not renewed by Singleton’s doctors in January 2000 while this appeal was pending. Since that time, Singleton has taken his medication voluntarily.

Although Singleton now takes his medication voluntarily, should he refuse to take it, the state would be obligated to medicate him to control his psychotic symptoms, thereby reviving his claim. Because the combination of a *Harper* order and a scheduled date

of execution is likely to recur in the future, the appellate court believed the issue was not moot and agreed to hear the case.

The Majority Ruling

After considering the legality of the repetitive *habeas* petitions, the court considered the interrelated issues of whether the state may forcibly administer antipsychotic medication to a prisoner whose date of execution has been set and whether the state may execute a prisoner who has been involuntarily medicated under a *Harper* procedure.

Singleton argued that the involuntary medication regimen, legal under *Harper* during a stay of execution, becomes illegal once an execution date is set, because it is no longer in his best medical interest.

The Eighth Circuit Court of Appeals, in their analysis, first reviewed the U.S. Supreme Court rulings in *Ford v. Wainwright*, *Washington v. Harper*, *Riggins v. Nevada*, and their own recent analysis of forced medication in *U.S. v Sell*.^{1,5-7} Their holding in *Sell* was that the government's interest to make him competent to stand trial outweighed the defendant's right to refuse medication if the government could show: (1) an essential state interest that outweighs the individual's right to be free of medication; (2) no less intrusive way to meet that goal; and (3) proof by clear and convincing evidence that the medication is medically appropriate.

They acknowledged that restoring competence to be executed was a somewhat different question than competence to stand trial, but they would adopt the same principles.

After finding that the use of medication in Singleton's case met these three criteria, given his past response to medication and that he prefers the medication to alleviate his symptoms, they considered his argument that medication "obviously is not in the prisoner's ultimate best medical interest" where one effect of the medication would be rendering him competent for execution.

They concluded that eligibility for execution was the only unwanted consequence of the medication and that his due process arguments were foreclosed by the lawfully imposed sentence of execution and the *Harper* hearing. They held that the mandatory medication scheme, valid under the stay of execution does not become unconstitutional when an execution date is set. They also refused to adopt the Louisiana ruling based on state constitutional grounds

that the execution of an insane inmate who had been forcibly medicated into competence violated the state constitution.

The Dissent

Four justices dissented. These justices struggled with the question of whether psychotropic medications result in "artificial" or "synthetic" sanity (i.e., a mere masking of debilitating symptoms and that underneath this mask he remains insane). Because he was never truly free of the effects of his psychosis, they thought it was difficult to insure that he would meet the *Ford* standard of competency at the exact moment of his execution.

They also thought that the problem with pinning the constitutionality of the execution to the state's "intent" was questionable, because it is difficult to determine whether the state is medicating the inmate to protect him from harming himself or others, or whether the state is medicating him to render him competent for execution. They thought it unlikely that there would be only one exclusive motive. They concluded that once the execution date was set, the justification for medicating Singleton under *Harper* evaporated.

They also recognized the ethics bind for physicians treating such inmates. Medical ethics guidelines prohibit physicians from participating in an execution and in using medication solely to restore competence.³

Two dissenting justices also commented on the difficulties of deciding the case on the current record because of the changing status of Singleton's mental state, the U.S. Supreme Court's granting *certiorari* on their ruling in *Sell*, and the problems of successive *habeas* petitions on the same issue.

Commentary

This case raises several complicated questions for psychiatry and the legal system. The Supreme Court has just issued their opinion in *Sell*,⁸ which addresses the use of forced medication to allow the state to restore competence so that a defendant can stand trial. The majority opinion hopes to see forced medication rarely used and requires the courts first to take into account how much of the sentence has already been served or how long the defendant might remain in a hospital if civilly committed. The opinion encourages permitting forced medication for such

things as dangerousness or on other legal grounds before looking at the question of forcing medication to make a person competent to stand trial. They had no difficulty with treatment that had the “side effect” of restoring competence to stand trial. They did adopt the concept of medical appropriateness and the assessment of the likelihood of restoration. The *Sell* decision also requires courts to assess whether side effects might interfere with the defendant’s ability to assist counsel before ordering forced medication to restore competence to stand trial.

The *Singleton* case is also presented by the Eighth Circuit as one of an acceptable double effect—that is, a physician may give a drug to alleviate pain even if that treatment may hasten death by inducing side effects, as long as the primary intent is to alleviate pain. The court stated that, because the defendant was dangerous, he could be treated involuntarily, even if such treatment were to restore competency and result in execution.

It remains unclear whether physicians should forcibly treat an unwilling inmate when the treatment will result in execution. The difficult question is whether the impending execution is a legitimate “medical interest” to be taken into account by the treating physician. The court majority believes that doctors should not be concerned with the ultimate outcome. They should just treat the mental disorder. They see no medical interest related to the pending execution, but many psychiatrists will. Psychiatrists will not see treatment for mental illness as analogous to an appendectomy for an inmate on death row.

One model for thinking about this can be to see how this situation differs from treating a soldier with the goal of returning him to the front lines where he may face a high likelihood of death. The death penalty, unlike the military situation, is pure punishment. Justice Brennan recognized that any punishment that has as its purpose the annihilation of the prisoner cannot comport with human dignity, regardless of method or procedure, because it necessarily is a denial of that person’s inherent worth. The guidelines developed by the APA-AMA² are couched in language designed to be neutral on the death penalty itself and are focused on the ethics of physicians in the process. These guidelines do not define the contours of what constitutes a legitimate medical interest.

The court majority uses the setting of the date of execution as the critical time (the date is put on hold

pending appeals). Singleton had argued that the administration of antipsychotic medication, constitutional under *Harper* (for dangerousness) initially, became unconstitutional once the execution date was set, because at that time it was no longer in his medical interest to continue the medication.

Although I agree with the dissent’s conclusions, some of their reasoning is problematic. The dissenting justices unfortunately have what is best described as a judicial view of psychotropic medications. They emphasize the side effects and see the medication as merely “masking” the defendant’s underlying psychosis and thus see an improved mental state as “artificial” or “synthetic” sanity, terms used by the judiciary since the mid-1970s. Unlike most treatments for chronic physical conditions, in which medications are seen as ameliorating and allowing people to function more normally, Judge Heaney of the Eighth Circuit concludes: “I am left with no alternative but to conclude that drug-induced sanity is not the same as true sanity. . . . Underneath this mask of stability, he remains insane” (Ref. 4, p. 1034).

This, in my view, reflects concerns about psychiatric evaluations and the conclusions drawn. A competent evaluation should clarify how much an inmate understands and how much his thinking is distorted by the underlying psychosis. The pejorative use of terms such as synthetic sanity leads to much frustration for physicians in their dialogue with the courts. The Eighth Circuit majority seems to believe that since Singleton became dangerous when not taking medications on one occasion, he would always become dangerous when he stopped them.

As the dissent noted, it is unclear whether dangerousness in a death row isolation setting is being used merely as a pretext to force medication so that an inmate will remain competent to be executed. Medical ethics guidelines permit an exception to using medication in this situation only if the inmate is experiencing extreme suffering. In that case he should be treated only to the point that he is capable of expressing informed consent for continuing the medication.

Psychiatrists are not comfortable overriding patients’ refusals, absent an overriding compelling need. But overriding an inmate’s wish when he is competent to decide, solely for the purpose of allowing an execution, crosses the prohibition line in ethics for participation in an execution.

Singleton v. Norris: Competency to be Executed

The case is currently on appeal to the U.S. Supreme Court, but at the time this article was submitted for publication, the Court had not yet decided to grant *certiorari* or remand in light of the *Sell* decision.

References

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