

## Competence to Pursue a Habeas Petition

### **An Unrepresented Prisoner Is Entitled to a Competency Hearing When Seeking a Writ of Habeas Corpus When There Is Sufficient Evidence to Suggest Incompetence**

In *Allen v. Calderon*, 408 F.3d 1150 (9th Cir. 2005), the Ninth Circuit Court of Appeals considered whether the district court had erred in not considering evidence of a prisoner's incompetence before dismissing the prisoner's petition for a Writ of *Habeas Corpus*.

#### *Facts of the Case*

Ernest Lee Allen, a prisoner in Corcoran State Prison in California, filed a federal *habeas corpus* petition claiming that his sentence constituted cruel and unusual punishment. The circumstances regarding his conviction were not considered by the Ninth Circuit and were not described in the opinion. The petition was unsigned by Mr. Allen. The district court issued an order requiring Mr. Allen to submit an amendment within 30 days that was to include his signature. After two weeks, Mr. Allen filed an amended petition that contained a photocopy, rather than an original, of his signature. He also added two claims of ineffective assistance of counsel.

The district court issued an order, again demanding Mr. Allen's signature. The district court also ordered Mr. Allen to show cause why the petition should not be dismissed for failure to exhaust the new claims.

A month later, Mr. Allen filed a motion for extension of time to show cause based on his claim that he did not have adequate access to the courts, was mentally impaired, and did not know how to respond to the order. In the motion were his sworn declaration and that of a fellow inmate, both of whom stated that Mr. Allen was mentally ill and did not understand the court's orders. Also included was a letter from Mr. Allen's treating psychiatrist in prison that stated that Mr. Allen had received a diagnosis of Chronic Undifferentiated Schizophrenia and was taking two psychotropic medications.

The district court allowed for an extension of time, but Mr. Allen was unable to respond. The district court issued a Report and Recommendation suggesting that the action be dismissed for failure to prosecute. Approximately two weeks later, Mr. Allen filed a motion for appointment of counsel stating:

[Allen has a] . . .debilitating mental illness that requires a course of treatment that includes the use of various psychotropic med-

ications. His mental condition and the side-effects associated with the prescribed medications severely [hinder] his ability to comprehend or correctly respond to the determinations and Orders made by the Court.

The district court denied the motion.

Mr. Allen filed objections to the Report and Recommendation stating the court was in error when it failed to consider his mental illness and limited access to a law library. However, the district court dismissed Mr. Allen's petition. Mr. Allen then appealed to the Ninth Circuit Court.

#### *Ruling*

The Ninth Circuit reversed the district court's dismissal of Mr. Allen's petition for Writ of *Habeas Corpus* and remanded the case for further fact finding. Specifically, the Ninth Circuit stated that the district court "should conduct a competency hearing to determine whether Mr. Allen is competent under an appropriate standard for habeas petitioners."

#### *Reasoning*

The Ninth Circuit concluded that the district court "abused its discretion in dismissing the petition" without first holding a competency hearing, by indicating that the lower court had sufficient evidence regarding the question of Mr. Allen's competence. Although Mr. Allen did not "artfully" present evidence of his incompetence and did not directly seek a competency hearing, because he represented himself, "the district court must construe pro se habeas filings liberally." Since Mr. Allen's allegations regarding his mental illness went un rebutted, the district court was required to consider them as true in its decision to dismiss the petition. The Ninth Circuit rejected the State's claim that the district court may have considered the evidence insufficient since there was no reasoning provided in the district court's dismissal of the petition.

The Ninth Circuit applied to *habeas* petitioners Rule 17 of the Federal Rules of Civil Procedure, which states that courts are required to "appoint a guardian ad litem for an . . .incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the incompetent." The Ninth Circuit also referred to an earlier ruling, *Krain v. Smallwood*, 880 F.2d 1119 (9th Cir. 1989), in which it reasoned that when the mental competence of an unrepresented party in a non-*habeas* civil action is in question, the district court should conduct a competency hearing and appoint a guardian *ad litem*, if necessary.

The Ninth Circuit dismissed the State's claim that the application of the *Krain* ruling would create a blanket rule for the appointment of counsel for mentally incompetent *habeas* petitioners. The Ninth Circuit limited its holding to the appointment of counsel for the purpose of representing the petitioner at the competency hearing.

*Discussion*

In *Pate v. Robinson* 383 U.S. 375 (1966) and *Drope v. Missouri* 420 U.S. 162 (1975), the United States Supreme Court established the principle that the courts and prosecution must raise the issue of incompetence in a criminal defendant when there is sufficient evidence, even if the defense does not. In this case, an unrepresented petitioner in a *habeas* hearing was unable to follow the orders of the district court, and the evidence he provided regarding the presence of mental illness consisted of a sworn declaration from himself and a fellow prisoner as well as a letter from a prison psychiatrist. Although the petitioner did not directly request a competency hearing, the Ninth Circuit holds the district court accountable for raising the issue of incompetence.

The Ninth Circuit leaves open the criteria to be used in determining competence in pursuing a *habeas* petition. The language in the holding stated "an appropriate standard for habeas petitioners" should be applied. Further clarifications in this standard may develop with subsequent case law.

Ari U. Etheridge, MD  
Fellow

John R. Chamberlain, MD,  
Assistant Clinical Professor  
Psychiatry and the Law Program  
University of California  
San Francisco, CA

## Application of *Sell v. United States*

### **A Harper Inquiry Should Precede a Sell Inquiry in Determining the Involuntary Administration of Psychiatric Medications**

In *United States v. Morrison*, 415 F.3d 1180 (10th Cir. 2005), the Tenth Circuit Court of Appeals considered whether the district court erred in ordering

involuntary medication based on application of the test described in *Sell v. United States*, 539 U.S. 166 (2003), without first considering administration of involuntary medication under the criteria set forth in *Harper v. Washington*, 494 U.S. 210 (1990), in a defendant found incompetent to stand trial.

The *Sell* test for the involuntary administration of psychiatric medications to restore competency to stand trial consists of four prongs:

1. A court must find that important government interests are at stake—that is, bringing a serious crime to trial.

2. A court must find that the medication is both substantially likely to render the defendant competent to stand trial and substantially unlikely to have side effects that will interfere significantly with the defendant's ability to assist counsel in conducting a trial defense.

3. A court must find that any alternative, less-intrusive treatments are unlikely to achieve substantially the same results.

4. A court must conclude that administration of the drugs is medically appropriate—that is, in the patient's best medical interest in light of his medical condition.

*Facts of the Case*

In February 2003, Jay Richard Morrison was charged with two federal counts of transmitting Internet communications that threatened the lives of the First President of the Church of Jesus Christ of Latter Day Saints and the members of the church's Quorum of the Twelve Apostles. At the Government's request, the magistrate judge ordered an examination of Mr. Morrison's competency to stand trial. The psychiatric evaluation found Mr. Morrison incompetent to stand trial and most likely insane at the time of the offense. The magistrate judge determined that Mr. Morrison was incompetent to stand trial and committed the defendant for treatment.

Initially, Mr. Morrison refused to take any medications but later consented to take quetiapine and continued to take the medication for four weeks. Subsequently, Mr. Morrison refused the medication, stating that it caused him to have "heart attacks."

The clinical psychologist treating Mr. Morrison stated that antipsychotic medication was necessary to restore competency. The psychologist addressed the last three prongs of the *Sell* test, stating that there was a substantial probability that the medication would