

tary of the social workers for performing careful clinical evaluations of Mr. Vallen that did not find him dangerous earlier, given that at any time this finding would have deprived him of his freedom by triggering recommitment. It is refreshing to see cases in which mental health professionals are commended by the courts and supported by the law when they use their clinical judgment appropriately, to inform the discharge of their legally prescribed duties.

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U.S. District Court Exceeds Its Statutory Authority by Scheduling a Dangerousness Hearing: Defendant Ordered Released

Court of Appeals Narrows Interpretation of the Insanity Defense Reform Act in Competency Issues

In *United States v. Lapi*, 458 F.3d 555 (7th Cir. 2006), the Seventh Circuit Court of Appeals reversed a decision of a district court in northern Illinois that had found the defendant dangerous without a hearing. The court of appeals found that the district court exceeded its statutory authority in scheduling a dangerousness hearing under 18 U.S.C. § 4246 (2005) (Insanity Defense Reform Act of 1984).

Facts of the Case

In July 2002, Tony Lapi was indicted on one count of bank robbery in the Northern District of Illinois. The question of Mr. Lapi's competence was raised by the defense, and an expert evaluation was ordered by the court. The defendant was placed in the custody of the U.S. Attorney General for 30 days at the Federal Medical Center (FMC) in Rochester, Minnesota.

Mr. Lapi's diagnosis was schizoaffective disorder. After a 30-day commitment, the court found him

mentally incompetent to stand trial under 18 U.S.C. § 4241(d) (2005). Mr. Lapi was committed for restoration for two subsequent 120-day periods, after which his psychiatrist confirmed the earlier diagnosis of schizoaffective disorder and reported to the court that there was not a substantial probability that Mr. Lapi would be restored to competency in the foreseeable future. The court entered a finding of nonrestorability and ordered Mr. Lapi placed in the custody of the Attorney General of the United States, pending the resolution of proceedings under 18 U.S.C. § 4246.

Finding that Mr. Lapi met both requirements of § 4246 of the Insanity Reform Act—namely, that he had a mental disease or defect, as a result of which his release would create a substantial risk of bodily injury to another person or serious damage to property of another and that suitable arrangements for care in state custody were not available—the warden of the FMC filed a Certificate of Mental Disease or Defect and Dangerousness in the District Court for the District of Minnesota. Shortly thereafter, in October 2003, Mr. Lapi was accepted for transfer to the Elgin Mental Health Center (EMHC) in Illinois, and the petition was withdrawn. After approximately 30 days, he was discharged to a group home and then to a nursing home.

In May 2004, the government filed a motion in the Northern District of Illinois requesting a second competency evaluation. The court denied the motion, stating that it did not have the statutory authority to reassess Mr. Lapi's competency to stand trial. However, the court classified Mr. Lapi as a "fugitive" because "he was released without any bond ever being set." After his arrest, the government petitioned for another competency evaluation, which was denied.

In May 2005, without a motion from either the government or the defense, the court ordered a dangerousness hearing. The Northern District of Illinois held that the district court in Minnesota had erred when it did not hold a hearing after the FMC warden filed the certificate that he eventually withdrew. In October 2005, without scheduling the hearing, the court declared Mr. Lapi dangerous, and he was held in custody until the court of appeals' ruling in June 2006.

Mr. Lapi appealed, and the Seventh Circuit Court of Appeals denied the motion for release, but vacated the order of the Northern District of Illinois and remanded the case for further proceedings, consis-

tent with the statute in question. The court reserved the question of whether a second competency hearing was appropriate. On remand, the district court scheduled a dangerousness hearing, stating that the court in Minnesota failed to conduct a hearing when it transferred Mr. Lapi to a hospital in Illinois. The court further ruled that the EMHC was required to consult the Federal District Court before releasing Mr. Lapi. The defense objected and submitted that a new hearing was not authorized by statute or the court of appeals order. Mr. Lapi again appealed.

Ruling and Reasoning

The court of appeals ruled that the collateral-order doctrine was sufficient to grant jurisdiction. Citing Mr. Lapi's liberty interest, the court held that the requirements to issue a writ of *mandamus* were met and that the district court's order ". . .inflict[ed] irreparable harm." The court described the ruling of the district court as an error "so serious that it amounts to an abuse of the trial judge's authority."

The errors of the District Court for the Northern District of Illinois stemmed from its determination that it had statutory authority to conduct a dangerousness hearing and that it could reconsider civil commitment under § 4246. It interpreted the statute to authorize a dangerousness hearing if the defendant had been transferred to state custody and believed that the transfer might have been improper. The court of appeals ruled that the statute applies only to defendants in the custody of the attorney general for a competency evaluation and to prisoners whose sentences are about to expire. Mr. Lapi was no longer in the custody of the U.S. Attorney General, because he had been transferred to Illinois custody for civil commitment. Also, the court ruled that § 4246 applies only when a Certificate of Mental Disease or Defect and Dangerousness has been filed by the facility in which the defendant is hospitalized. In Mr. Lapi's case, the certificate had been filed but was withdrawn by the government upon his acceptance at the EMHC. The appeals court held that once the certificate was withdrawn and once Mr. Lapi had been transferred with "suitable arrangements for state custody and care," Mr. Lapi was no longer subject to the provisions of § 4246.

Further, the court determined that "even if a valid certificate" was on file at the time of the order, it would be effective only if it was on record in the jurisdiction in which the defendant was confined. In

Mr. Lapi's case, the District Court for the Northern District of Illinois did not have jurisdiction, because he was confined within the jurisdiction of the District Court for the District of Minnesota. The court found that its conclusions were consistent with those of other courts of appeals.

Finally, the court of appeals, citing *United States v. Shawar*, 865 F.2d 856 (7th Cir. 1989), held that, as a general principle, the care of the mentally ill belongs to the states. The Insanity Defense Reform Act was "drafted narrowly" to make a federal dangerousness hearing rare and allowed only when a state would not commit a hospitalized defendant whose federal sentence is about to expire. Once state civil commitment proceedings are instituted and custody of the defendant is transferred to a state, "the Federal District Court simply no longer has the authority to order a § 4246 hearing" (*Lapi*, 458 F.3d, p 563). The appeals court indicated that the opposite would mean that the federal judiciary would have to monitor the treatment of patients in state custody constantly and that the statute did not ". . .intend for federal courts to play such an expansive role."

Discussion

United States v. Lapi is a case of a federal defendant found incompetent and unlikely to be restored to competence while charges are pending. It illustrates the importance of the principle that it is the role of individual states to care for the mentally ill. What is unusual about this case is that it involves a defendant who was held in a jurisdiction other than the one in which his charges originated. Also, it demonstrates the government's frustration that a defendant with a serious criminal charge can be released after a brief civil commitment.

In the wake of *Jackson v. Indiana*, 406 U.S. 715 (1972), most states have provisions for how to proceed with charges once a court has ruled that the defendant is unlikely ever to become competent. This case suggests, however, that, in the federal system, the Insanity Defense Reform Act provides no specific guidance other than to seek treatment within the states. It remains unconstitutional to commit indefinitely an individual who may never be restored to competency. Practically, the ruling may put pressure on the prosecution to consider other means of disposition if a defendant is mentally ill and found incompetent. According to Ms. Judge, Mr. Lapi's defense attorney, "Since the ruling, in this district when

someone has been charged with a nonviolent crime and competency is an obvious issue from the start, the government seems more willing to negotiate and pursue other options” (personal communication with Mary Higgins Judge, Esq., December 6, 2006).

Mr. Lapi’s charges were eventually dismissed because the government had no further recourse once he was ordered released. The only time-specific provision was the statute of limitation relevant to each charge. If the government chose not to dismiss charges and the defendant remained incompetent until the date of limitation had passed, the charges would be dismissed automatically.

It remains unseen as to how far this decision will reach. Nevertheless, it more clearly illustrates the federal courts’ role in handling mentally ill defendants who are incompetent and is consistent with previous rulings in other districts.

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Sex Offender Laws: Commitment and Treatment of Individuals Deemed to be Sexually Violent Predators

Constitutional Rights of Individuals Committed as Sexually Violent Predators Outlined

In *Hydrick v. Hunter*, 449 F.3d 978 (9th Cir. 2006), civilly committed inmates and those awaiting commitment pursuant to California’s Sexually Violent Predators (SVP) Act brought a class action against public officials alleging violation of their constitutional rights. The district court denied the officials’ motion to dismiss. The court of appeals held that the officials had qualified immunity from suit on *ex post facto*, double jeopardy, and Eighth Amendment claims. On all other claims, the denial of dismissal was affirmed.

Facts of the Case

California’s SVP Act defines an SVP as an individual who has been convicted of a sexually violent offense against at least two victims, has received a determinate sentence, and has a mental disorder that makes the person a danger to others. Before completing the sentence, the person is evaluated by the Department of Corrections and Department of Mental Health. If they agree that the person may be an SVP, a petition for commitment may be filed. If a jury finds the person to be a danger, he or she is civilly committed. This commitment commences after the criminal sentence is fulfilled. Each year, the person has a right to a hearing to determine whether commitment should be continued. Once committed, the person undergoes a five-phase treatment program. During Phase 1, the SVP is required to participate in treatment sessions or his or her access level is reduced. Failure to participate is used against the SVP in future hearings, and the SVP cannot advance to Phase 2. The SVP cannot advance beyond Phase 1 unless he or she signs a statement acknowledging an illness that requires treatment.

On September 2, 1998, the plaintiffs filed a *pro se* class action on the grounds that the policies and procedures governing their confinement and treatment violated their constitutional rights. In March 1999, the district court appointed counsel who later filed an amended complaint. The defendants’ motion to dismiss was denied. The plaintiffs later filed a second amended complaint. Both amended complaints alleged that the defendants violated the plaintiffs’ rights by forcibly medicating them in nonemergency situations; reducing their privileges as a form of punishment for refusing to participate in treatment sessions or as retaliation for filing lawsuits; putting them in restraints for non-threatening and/or nondisruptive conduct; subjecting them to public strip searches; failing to protect them from abuse of other patients or employees; failing to provide constitutionally satisfactory conditions of confinement; forcing them to participate in treatment; and denying adequate treatment, thereby converting the civil confinement to a *de facto* extension of the prison sentence. Again, the defendants’ motion to dismiss was denied. They appealed, arguing that the district court erred by failing to rule that the Eleventh Amendment, state abstention doctrine, or qualified immunity barred the suit.