

adequate release program, Mr. Stewart had failed to show by clear and convincing evidence that his release would not create a substantial risk of bodily injury to another person or serious damage to the property of another.

Ruling

The Court of Appeals for the Third Circuit affirmed the district court's decision, finding that Mr. Stewart had not proven by clear and convincing evidence that his release would not pose a substantial risk of bodily injury to others or serious damage to property.

Reasoning

The court of appeals held that it had jurisdiction to hear Mr. Stewart's appeal and that its review was for clear error. According to the standard regarding clearly erroneous decisions, an appeals court can reverse a ruling only if, after reviewing the record, it is left "with the definite and firm conviction that a mistake has been committed." On appeal, Mr. Stewart argued that the district court had committed a clear error, because the evidence he presented clearly and convincingly established that his release would not create a substantial risk of bodily injury to another person or serious damage to property. The court found, however, that the trial judge did not commit a clear error in ruling that Mr. Stewart failed to establish his entitlement to release.

The appeals court found that Mr. Stewart had failed to provide clear and convincing evidence that his post-release plan would provide the structured and supervised environment needed to ensure his compliance with medication. These factors, coupled with his mental health, criminal history, and the difficulty of his transition to independent living supported the district court's findings.

Discussion

In this case, the Third Circuit Court of Appeals found that a district court's commitment order is a finding of fact that can be reversed only if clearly erroneous. Other circuits had previously upheld this standard. The standard grants district courts great latitude when determining whether a mentally ill defendant is ready to be released. While Mr. Stewart responded well to treatment, had committed no further violent acts, and had advanced through the mental health system, at trial he was unable to provide clear and convincing evidence that his release would

not create a substantial risk of bodily injury to another person or serious damage to the property of another. Since the district court was not permitted to order a conditional release under the commitment statute, Mr. Stewart remained on a commitment.

Commitment statutes attempt to balance the rights of individuals with the maintenance of a safe society. Mr. Stewart was committed under 18 U.S.C. § 4243(e) (2005). That commitment left the district court authority either to commit him or to release him unconditionally. In contrast, 18 U.S.C. § 4243(f) (2005) authorizes the district court to order a conditional release after an individual has been committed pursuant to 4243(e). Mr. Stewart's counsel requested a hearing for release under 4243(f) and 4247(h) (1997), which would provide the court with authority to release him with conditions (e.g., "a prescribed regimen of medical, psychiatric, psychological care or treatment"). Forensic psychiatrists will increasingly be asked to translate their risk assessment evaluations into conditional-release program recommendations. By understanding commitment statutes and completing thorough evaluations, forensic psychiatrists aid the legal system by providing recommendations. It is crucial that post-release plans be appropriate and feasible, to balance the competing interests of public safety and individual rights.

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Criminal Sentencing of Mentally Ill Persons

Standards for Implementing a Downward Departure From the United States Sentencing Guidelines for Diminished Mental Capacity and for the Adjustment for Acceptance of Responsibility in Persons With Mental Illness

In *United States v. Schneider*, 429 F.3d 888 (9th Cir. 2005), the United States District Court for the District of Oregon sentenced Mr. Schneider to 10

months' imprisonment for theft of government money and Social Security fraud. The sentencing court, under the then-mandatory United States Sentencing Guidelines, had adjusted the sentence upward by six levels because the court found that the loss exceeded \$30,000. The jury, however, made no finding of a loss exceeding \$1,000. The records were insufficient for the appeals court to determine the exact amount lost. The case was remanded for proceedings consistent with *United States v. Ameline*, 409 F.3d 1073 (9th Cir. 2005). The Ninth Circuit Court of Appeals determined that the district court had appropriately remanded the case in light of *Ameline*. However, the district court had not considered both volitional and cognitive elements in denying diminished mental capacity and had misapplied the adjustment for acceptance of responsibility.

Facts of the Case

In November 2003, Paul Schneider was convicted of theft of government money and Social Security fraud. He had applied for disability benefits in 1984 after having an acute manic episode while in the Marine Corps on a tour of duty on the Indian Ocean. He was evacuated to Guam and then transported to a hospital in Washington, D.C., where he spent eight months in a locked psychiatric facility. He was transferred to the Veteran's Administration Hospital for three months of inpatient treatment, after which he filed for Title II disability benefits.

Since 1984, he had experienced repeated manic episodes with psychotic symptoms. During one episode, he was involved in a high-speed police chase while under the belief that he was participating in a training maneuver for the police department. Mr. Schneider was hired by the Social Security Administration as a telephone service representative from April 1997 to August 2000. During this period, he continued to receive disability benefits from the Social Security Administration, although his income exceeded the minimum amount that constitutes "substantial gainful work" under Title II of the Social Security Act.

Upon conviction, he was sentenced to 10 months' imprisonment. He appealed, arguing that: (1) his Sixth Amendment rights were violated, because his sentence was enhanced by judge-found facts under the then-mandatory United States Sentencing Guidelines; (2) the district court erred in denying him a downward departure for diminished capacity

under U.S.S.G. § 5K2.13 (2000); and (3) the district court erred in denying him an adjustment for acceptance of responsibility under U.S.S.G. § 3E1.1 (2002). Upon resentencing in November 2003, Mr. Schneider provided evidence of his mental illness, including a psychiatric evaluation by Dr. Fiester, who concluded that he "suffers from a lifelong psychiatric disorder which is disabling." He was thought to have demonstrated symptoms of both bipolar disorder and schizophrenia. Dr. Fiester explained that Mr. Schneider had a distorted view of reality and believed that he was entitled to financial benefits from both work and disability. During the hearing, the district court considered whether Mr. Schneider qualified for an adjustment for acceptance of responsibility or for a departure for diminished capacity. The court denied both, and imposed the original sentence. The case was appealed to determine whether the proceedings were consistent with *United States v. Ameline*.

Ruling and Reasoning

The Ninth Circuit noted the need to remand the case in light of *United States v. Ameline*. The sentencing court had adjusted the guideline range upward, although there was no sufficient evidence for this in the record. Under *Ameline* when:

...[T]he record is insufficiently clear to conduct a complete plain error analysis, a limited remand to the district court is appropriate for the purpose of ascertaining whether the sentence imposed would have been materially different had the district court known that the sentencing guidelines were advisory [*Ameline*, 409 F.3d, p 1073].

The court of appeals noted that the district court's refusal for departure under U.S.S.G. § 5K2.13 rested on two significant errors: the misapprehension of departure authority for diminished capacity and the misapplication of the standard for acceptance of responsibility. The court noted, "The goal of § 5K2.13 is lenity toward defendants whose ability to make reasoned decisions is impaired." Under this guideline: " 'significant reduced mental capacity' means the defendant, although convicted, has a significantly impaired ability to (A) understand the wrongfulness of the behavior comprising the offense or to exercise the power of reason; or (B) control behavior that the defendant knows is wrongful" (*Schneider*, 429 F.3d, p 891). When determining a defendant's mental capacity, sentencing courts must consider both the cognitive and the volitional elements. The

district court had limited the determination of diminished capacity to the cognitive element. The sentencing hearing transcript indicated only that the wrongfulness of Mr. Schneider's behavior was considered. The district court had not considered whether Mr. Schneider had had the power to control his behavior or to conform to the law.

The second error of the district court in considering a departure from the sentencing guidelines was conflating the standards for diminished capacity with those for the adjustment for acceptance of responsibility. The court noted, "To receive an acceptance-of-responsibility adjustment, a defendant must truthfully admit the conduct comprising the offense and manifest adequate contrition for his or her actions in a timely manner." While discussing the adjustment for acceptance of responsibility, the court stated that Mr. Schneider, "knew exactly what he was doing throughout the commission of the crime." This statement applied more to his understanding of the offense than to his current acceptance of responsibility. The district court had viewed his diminished capacity "in light of" his acceptance of responsibility, thus conflating these standards.

Discussion

Initially, this case looks like a standard remand consistent with *Ameline* proceedings. The defendant was sentenced for theft, there were necessary adjustments for the amount of funds, and the case was remanded for resentencing. The unique slant lies within the concurrence by Justice Ferguson, who opined that the case is an example of the potential complications of evaluating mentally ill defendants for diminished capacity or for acceptance of responsibility. The determination of diminished capacity necessitates consideration of both the cognitive and volitional prongs of the standard. The standard for acceptance of responsibility must remain separate from the standard for diminished capacity. The nature of severe psychiatric illness makes it possible that the defendant's ability to accept responsibility for the behavior is impaired, even if she or he has a superficial understanding that the behavior is wrong. Therefore, it should not be assumed that the failure to accept responsibility equates with an ability to control behavior, which would fulfill the volitional prong of the diminished-capacity standard. Mr. Schneider appeared to understand the wrongfulness of his behavior (fulfilling the cognitive prong for de-

termining diminished capacity). Based on his delusional beliefs, he thought that his behavior was justified, but the question of his control remained unanswered. Psychiatrists may be asked to evaluate mentally ill persons for diminished capacity or acceptance of responsibility. As exemplified by *Schneider*, it is essential that the standards for these findings be made clear in consultations from attorneys and in the psychiatric evaluations.

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Revocation of Conditional Release of a Mentally Ill Prisoner

Revocation of Conditional Release on Probation of a Previously Mentally Ill Prisoner May be Proper, Despite Compliance With Prescribed Treatment

In *United States v. Franklin*, 435 F.3d 885 (8th Cir. 2006), the United States Court of Appeals for the Eighth Circuit examined 18 U.S.C. § 4246 (2005), which regulates the conditional release of federal prisoners who are due for release but have psychiatric illnesses. The court found that, although § 4246 explicitly requires that courts impose the condition of compliance with psychiatric treatment, other ancillary conditions may also be imposed, when granting release. Further, the violation of those ancillary conditions may properly result in the revocation of the conditional release of the prisoner.

Facts of the Case

In February 1991, Gordon Franklin was involuntarily hospitalized at the U.S. Medical Center for Federal Prisoners in Springfield, Missouri, for behavior stemming from mental illness. In 2003, the government moved for Franklin's conditional release, under 18 U.S.C. § 4246, on the grounds that Franklin had "recovered from mental disease." Section