

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

4246 outlines procedures for the release of federal prisoners who are due for release but have a mental illness that poses a public safety risk. The district court granted the motion, pursuant to 18 U.S.C. § 4246 with the following relevant conditions for release:

The defendant shall participate in mental health treatment services as directed by the U.S. probation officer until successfully discharged. These services may include prescribed medications by a licensed physician.

Defendant shall be supervised by the U.S. probation office and will comply with the standard conditions of the Northern District of Florida. . . [Franklin, 435 F.3d, p 886].

In August 2004, during a telephone conversation with his probation officer, Mr. Franklin threatened to kill the officer, the officer's supervisor, the officer's family members, and a federal judge. Consequently, the government moved to revoke Mr. Franklin's conditional release. The government's motion included information from Mr. Franklin's family indicating that his behavior had become erratic, despite his adherence to medication, and that he posed a risk of harm to himself and others. A psychological review, conducted at Mr. Franklin's request, concluded that he had bipolar disorder and that he met involuntary commitment criteria. A separate risk assessment review by a mental health panel found that, despite his compliance with medication, Mr. Franklin's mental stability was impaired and he posed a public safety risk.

Based on this information, a magistrate judge recommended the revocation of Mr. Franklin's release. He objected, asserting the lack of evidence that his release represented a danger to the public. Upon considering his objections, the District Court for the Northern District of Florida found that the revocation of his release was proper, because Mr. Franklin failed to comply with the prescribed treatment regimen as required by 18 U.S.C. § 4246. On appeal, Mr. Franklin argued that the government could not use his behavior in August 2004 to support the revocation of his release under 18 U.S.C. § 4246, since he had been compliant with the prescribed treatment. The government argued that Mr. Franklin's violation of the law served as violation of his prescribed treatment regimen, and therefore, the revocation was proper.

Ruling and Reasoning

The Eighth Circuit Court of Appeals reviewed the case and ruled that the revocation of Mr. Franklin's

conditional release was proper. The appeals court, however, did not agree with the government's contention that violation of the law constituted violation of the prescribed treatment regimen *per se*. Instead, the court found that Mr. Franklin violated the release condition requiring his compliance with standard conditions of the Northern District of Florida. The court stated that under 18 U.S.C. § 4246, the government could impose "ancillary" conditions for release, along with conditions requiring prescribed treatment compliance. The court examined the relevant portion of § 4246 which stated that the district court must, when conditionally releasing a person, "order, as an explicit condition of release, that he comply with the prescribed regimen of medical, psychological care or treatment."

The court reasoned that the use of the indefinite article in "an explicit condition" implied that other conditions were also permitted. The court then pointed to 18 U.S.C. § 3603(8)(B) (2005) which states that a probation officer must "immediately report any violation of the conditions of release to the court and the Attorney General or his designee." The court found that the plural of "conditions" in 18 U.S.C. § 3603 further supported the view that ancillary conditions could be imposed. In addition, the court cited *United States v. Jain*, 174 F.3d 892 (7th Cir. 1999), which interpreted the indefinite article "an" in a statute similar to 18 U.S.C. § 4246 to mean that additional conditions may be imposed. The court also cited *United States v. Phelps*, 283 F.3d 1176 (9th Cir. 2002), which found that, since a district court may completely deny release, it may also impose any reasonably necessary conditions related to mental illness, to ensure the safety of the public when granting release.

The Eighth Circuit stated that the ancillary condition requiring compliance with the Northern District of Florida's standard conditions was related to Mr. Franklin's mental illness and was necessary to ensure public safety. Further, refraining from violation of the law was a standard condition of supervision in the Northern District of Florida. Accordingly, Mr. Franklin's behavior in August 2004, which was attributed to mental illness, violated that standard condition. Therefore, the district court did not err in finding that he had violated his conditional release.

The appeals court then considered whether the district court had the authority to revoke the condi-

tional release for violation of an ancillary condition. The court acknowledged that, although § 4246 permits revocation for failure to comply with the prescribed treatment regimen, it does not outline remedies for violation of conditions ancillary to the prescribed treatment regimen.

The appeals court reasoned that, just as the authority to impose ancillary release conditions was not prohibited by the explicit authority to impose a condition requiring compliance with the prescribed treatment, the authority to revoke conditional release for noncompliance with ancillary conditions was not prohibited by the explicit authority to revoke release for violation of the prescribed treatment condition. The court reasoned that without the ability to enforce ancillary conditions, a court would be powerless to act on many violations related to mental illness that represent danger to the public. Accordingly, the judgment of the district court was affirmed and the revocation of Mr. Franklin's release was upheld.

Discussion

In this case, the Eighth Circuit considered whether the conditional release of a federal prisoner under 18 U.S.C. § 4246 may be revoked for violations other than noncompliance with a mandatory treatment regimen. The relevant statutory provisions in this matter were enacted to ensure public safety when considering the conditional release of federal prisoners with mental illness. The complicating issue in this case was that Mr. Franklin's behavior became erratic, despite his apparent compliance with the mandatory treatment.

It is clear from the court's analysis that the statute allows for imposition of other conditions reasonably related to maintenance of mental health and prevention of public harm, besides simple compliance with treatment. Further, for those additional conditions to have true significance, their violation must carry the potential for revocation of release. This view seems to flow naturally from the fact that a prisoner's conditional release may be predicated on recovery from mental illness, and therefore, evidence to the contrary should support the revocation of such a release. In this case, the court considered prisoners' rights, as outlined by the statute, in the setting of potential harm to the public.

Such considerations become especially relevant when there is a history of assaultive behavior due to mental illness, as in the instant case. Given the idea

that ensuring public safety is paramount, the holding of the Eighth Circuit is not surprising. This case offers a glimpse at the judicial approach to interpreting statutory provisions, which may, on their face, appear to fail to address fully their intended purposes. The court clearly illustrated in this case that a statute may implicitly create powers that carry weight equal to those powers that were explicitly enumerated. Such an approach to interpreting statutory law allows the court to uphold the overall intent of a statute without being confined by its explicit terms.

The Eighth Circuit's ruling is in harmony with two major goals of psychiatry: the prevention of acute exacerbation of psychiatric illness through the promotion of treatment compliance and the prevention, whenever possible, of public harm by patients who have acute episodes of mental illness. These goals are not only important in the management of the mentally ill in the criminal setting, but also form the basis of civil outpatient commitment laws. Outpatient commitment laws, as well as inpatient involuntary civil commitment measures, serve to promote mental health and ensure public safety and, accordingly, share these goals with the holding in this case.

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Therapists' Roles in Supervised Release

Defendant May Be Prohibited From Engaging in Legal Proceedings Toward a Specific Entity at a Therapist's Discretion as a Condition of Supervised Release

In the *United States v. Wilinski*, 173 Fed.Appx. 275 (4th Cir. 2006), the U.S. Court of Appeals for the Fourth Circuit considered whether the District Court of Maryland at Greenbelt had erred when deciding that, as a condition of supervised release, the defendant could be prohibited from filing a lawsuit