

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

against a certain university and its staff without the consent of his therapist.

Facts of the Case

In July 2003, Jeffrey Wilinski, a former student of the University of Maryland, College Park, harassed employees by sending them “racially abusive and vulgar electronic mail” (*Wilinski*, p 276), because he believed that the university had placed him and his family under surveillance. As a result of his e-mails, the university banned him from campus. He then sent a letter to a former attorney threatening a shooting spree should the university fail to stop harassing him. Mr. Wilinski was arrested three months after sending the first e-mails, at which time the police found a large cache of firearms in his home. Upon arrest, he warned that he should not be released from jail because he would seek violent revenge against the university, referring to the violent confrontation between the FBI and the white separatist Randy Weaver and indicating that his actions would surpass Weaver’s. He was committed for mental health treatment while awaiting trial. After pleading guilty to communicating threats through the mail, Mr. Wilinski was sentenced to a time-served sentence of 273 days’ incarceration and three years of supervised release, which included a condition that he not engage in any legal proceedings against the University of Maryland, College Park, without permission from his mental health care provider.

Mr. Wilinski appealed the trial court’s judgment, arguing that the condition of his supervised release, which prohibited his filing legal action without consent of his treatment providers: (1) was not “narrowly tailored to further a compelling government interest” (*Wilinski*, p 276), (2) was in conflict with his right of access to the courts, and (3) undermined the relationship between therapist and patient.

Ruling

The Fourth Circuit found no error in the district court’s imposition of the special condition and affirmed the district court’s judgment.

Reasoning

The appeals court held that district courts “enjoy ‘broad latitude’ in imposing special conditions of conditional release” (*Wilinski*, p 276), noting that the district courts must assure that any special conditions meet the requirements of federal law 18 U.S.C. § 3583(d) (2005) (which refers to 18 U.S.C.

§ 3553 (a)). The law provides that the court may order conditions of supervised release as long as those conditions meet three requirements. First, the conditions must be reasonably related to (1) “the nature and circumstances” of the crime; (2) the circumstances and history of the defendant; (3) the provision of adequate deterrence; (4) the protection of the public from further crimes; and (5) the need to provide the defendant with “necessary educational or vocational training, medical care, or other correctional treatment in the most effective manner” (18 U.S.C. § 3553 (a)). Second, the condition must involve “no greater deprivation of liberty than is reasonably necessary” (18 U.S.C. § 3553 (a)). Third, the condition must be “consistent with any pertinent policy statements issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)” (*Wilinski*, p 276).

The Fourth Circuit held that the supervised-release condition imposed by the district court in sentencing Mr. Wilinski met the statutory criteria, in that the condition was tailored to the nature and circumstances of his offense; was a deterrent to his committing future crimes; helped to protect the public from his committing future such crimes; promoted his rehabilitation; and, in these ways, served a compelling government interest.

The appeals court held that the right of access to courts is fundamental, but, referring to *United States v. Ritter*, 118 F.3d 502 (6th Cir. 1997), ruled that access to courts can be restricted when restriction promotes rehabilitation and prevents recidivism. The court, citing *United States v. Fellows*, 157 F.3d 1197 (9th Cir. 1998), further ruled that, because Mr. Wilinski had a mental illness, a symptom of which included paranoid beliefs about the university, “the therapist [was] in the best position to know whether or not a lawsuit against the university or its staff [would] further his recovery” (*Wilinski*, p 277). In *Fellows*, the Ninth Circuit had considered whether a man with pedophilia could be required, as a condition of supervised release, to comply with “lifestyle restrictions” (interpreted by the court as complying with the treatment recommendations of his required sexual offender program) set by his mental health care provider. Mr. Fellows had argued that such a condition was too broad and improperly delegated judicial authority. The *Fellows* court affirmed the lower court’s decision, arguing that the therapist was “in the best position to know what lifestyle restric-

tions are necessary to enhance [the defendant's] treatment and reduce the likelihood that he [would] re-offend" (*Fellows*, p 1204). With similar language, the appeals court argued that the defendant's therapist was "in the best position" to judge whether a lawsuit against the university or staff would promote or hinder his rehabilitation.

The Fourth Circuit further held that, because Mr. Wilinski was prevented only from filing lawsuits against the university and its staff, the objects of his paranoia, the condition was indeed tailored to his circumstances and, by implication, narrowly tailored to serve a compelling government interest.

Discussion

In *Fellows*, the appellate court established that a court could require a defendant to follow the lifestyle restrictions set by his mental health care provider as a special condition of supervised release. *Wilinski* expands on *Fellows* to include as a special condition of supervised release that access to legal proceedings (albeit narrowly defined) be controlled by a mental health care worker. An objection raised by Mr. Fellows was that, by ordering that the defendant follow his treater's recommendations (as they evolved), the courts were improperly delegating judicial authority to mental health care providers. The *Fellows* court ruled that the therapist was in the best situation to decide what lifestyle restrictions would promote rehabilitation and reduce recidivism. In *Wilinski*, the Fourth Circuit's affirmation of the special condition that limits the filing of lawsuits implies that lifestyle restrictions can include limited access to the courts. The court reasoned that the limitation of access was narrowly defined to include only the university and its staff, that is, the subjects of the defendant's delusional beliefs.

By creating a circumscribed legal parameter around a complicated and evolving psychiatric condition, the court has placed mental health providers in a potentially difficult moral position in several

senses. By stipulating that providers make a decision only about a specific situation—in this case, whether a patient can sue a particular university—the court leaves open the possibility of significant conflicts for mental health care providers. For example, consider that Mr. Wilinski, though blocked from filing suit against the university by the mental health care provider, could file suit against the mental health center for blocking access to the court. Indeed, the narrowness of the ruling offers little clarification and no protection to psychiatric and other mental health care providers who want to limit monitoring of lifestyle to areas of their expertise.

Moreover, *Wilinski* sets a precedent that has uncertain potential. Given the extension of the power and responsibility of mental health care providers in *Wilinski* to determine access to the courts, one wonders what other types of decisions mental health professionals will be expected and allowed to make vis-à-vis the legal system, as conditions of supervised release.

Delegating to mental health professionals the determination of whether a patient can take legal action raises at least two important concerns: (1) Because mental health professionals (defined broadly in *Wilinski*) have limited familiarity with legal proceedings, how equipped are they to assess accurately whether patients' pursuing a given legal action will be detrimental to their rehabilitation? (2) The role of determining whether a patient can pursue legal recourse is a powerful form of paternalism that follows, ironically, the shift to greater civil rights assurances for persons with mental illness that began in the 1960s. What are the dangers inherent in such paternalism?

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