

Limitations of Constitutional Protections in *Jackson v. Indiana* Pertaining to Charges With No Statute of Limitations

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There has been a long-standing link between the civil and criminal commitment procedures for individuals found incompetent to stand trial (IST). In the criminal system, when restoration of competency fails to be realized in a reasonable time, the civil commitment process becomes the default system for commitment. While there have been recent calls for improved mechanisms for predicting competence restorability, there has been little attention paid to individuals who can oscillate indefinitely between commitment in both the criminal and civil systems. We provide an example of one such case where an individual falls into the legal space that sits outside of the judicial guidance outlined in the landmark case *Jackson v. Indiana*. This review of Oregon public documents surrounding an ongoing murder case highlights the potential for indefinite detention of individuals who have been charged with serious crimes that do not have a statute of limitations, who are unlikely to be restored to competency to stand trial, and who are inconsistently found to be dangerous under civil commitment standards.

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In recent years, there has been a renewed focus on the problems associated with the question of prolonged incompetency of those individuals found incompetent to stand trial and committed to psychiatric hospitals for competency restoration. In a 2012 editorial in *The Journal*, Parker¹ focused on the great variability with which the various states approach the length of hospital stay before determining that an incompetent defendant is unable to be restored to competency. He argued for the development of research that would lead to a more uniform approach to the determination of competence restorability. In the same issue, Parker's position was supported in a commentary by Kaufman *et al.*,² who also brought up the important question of what happens to defendants found unrestorable. In an earlier article, Levitt *et al.*³ reported on a study from Arizona that focused on individuals who were civilly committed after a find-

ing of nonrestorability. They found that individuals committed after they were found unrestorable represented a categorically different group of civil committees than those committed without immediate criminal court involvement. This suggests that civil commitment was being used differently by the state for different populations.

Our commentary provides an illustration of long-term civil commitment after a finding of unrestorable competence to stand trial for a murder charge. All of the material for this commentary came from Oregon's largest newspaper, *The Oregonian*, and public files of the Oregon State Bar. None of the authors had any direct involvement with the individuals mentioned in the commentary.

On December 22, 2011, *The Oregonian* published a lead story entitled "Ethics Complaints Filed Against Washington County District Attorney, Judge and Defense Attorney."⁴ The article explained that a retired Lane County Judge, Jim Hargreaves, had filed ethics complaints with the Oregon State Bar in December 2011 against the Washington County District Attorney and a defense attorney at the Metropolitan Public Defender Agency.⁴ The

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judge also filed a complaint with Oregon's Judicial Fitness Commission against a Washington County magistrate.⁴ Judge Hargreaves had served under Oregon's former Governor Ted Kulongoski as Special Master to the Oregon State Hospital during the early days of a U.S. Department of Justice CRIPA (Civil Rights Institutionalized Persons Act) investigation.⁵ In his complaints, Judge Hargreaves asserted that the district attorney, the defense attorney, and the magistrate had acted unethically in the hospitalization of a severely mentally ill individual by using a magistrate hold, which Judge Hargreaves stated did not exist in Oregon Statutes. In this commentary, we discuss the facts of the case that led to the complaint and their relevance to national case law. This case leads our discussion into the broader legal question of appropriate limits on the duration of institutionalization of individuals continually found incompetent to stand trial. This discussion will identify limitations of the landmark Supreme Court holding in *Jackson v. Indiana*.⁶

Facts of the Case

Donn Thomas Spinosa was charged with murder and unauthorized use of a vehicle in May 1997.⁷ He was accused of stabbing his ex-wife 20 to 40 times because she would not give him money for video poker.⁸ A few days after this alleged incident, he was found and arrested while driving his ex-wife's vehicle, which he had stolen.⁷

Mr. Spinosa first received a diagnosis of schizophrenia in his early 20s and earlier had received a diagnosis of polysubstance abuse and antisocial traits based on an extensive criminal history dating back to 1972.⁹ After a psychological evaluation in November 1997, he was found unable to aid and assist in the legal proceedings against him.¹⁰ He was thus committed to Oregon State Hospital for competency restoration. Subsequent evaluation reports between 1998 and 2000 opined that he continued to lack the capacity to stand trial.⁹ At a hearing in November 2000 concerning his fitness to proceed, the judge found that Mr. Spinosa was still lacking in capacity. In light of the fact that the defendant had been in the Oregon State Hospital for the maximum three-year period under which a person could be committed for the purpose of competency restoration pursuant to ORS (Oregon Revised Statute) 161.370, the judge ruled that all charges against him should be dismissed without prejudice (the modifier without prejudice

means that the charges could be refiled in the future). In addition, the judge ordered the Oregon State Hospital to initiate civil commitment proceedings against Mr. Spinosa and to maintain custody of him until such proceedings were conducted. He was civilly committed to the Oregon State Hospital in Salem beginning in November 2000. He remained there until June 2009 after repeated civil commitments. In June 2009, he was moved to an Oregon State Hospital facility in Portland while still under civil commitment.⁹

In late spring of 2010, the Oregon State Hospital authorities informed the Washington County district attorney that the hospital planned to release Mr. Spinosa into a community placement.¹⁰ Before he could be released to a secure community setting on his anticipated discharge date of October 1, 2010, the Washington County district attorney brought the case to a grand jury and then reindicted Mr. Spinosa on four counts, this time, of aggravated murder.⁹ On October 1, 2010, the day of his scheduled hospital discharge, Mr. Spinosa was arrested and transported to the Washington County Jail.⁷ On November 19, 2010, a defense psychologist evaluated him and authored a report in which he opined that Mr. Spinosa lacked the capacity to aid and assist in his defense.¹⁰ On December 15, 2010, the magistrate found that he was not competent to stand trial and committed him to Oregon State Hospital for competency restoration.^{9,11} A psychologist at Oregon State Hospital evaluated Mr. Spinosa and authored a report dated March 11, 2011, in which he opined that the defendant was not fit to proceed and that there was "no substantial probability that, in the foreseeable future, the defendant will gain or regain the capacity to stand trial" (Ref. 7, pp 7–8).

For the next eight months, Mr. Spinosa was incarcerated in Washington County Jail while the district attorney procured and reviewed his hospital and jail records dating back to 1997 and considered options on how to proceed.⁷ Mr. Spinosa was not taking psychotropic medications during his incarceration, and his condition deteriorated, as indicated by the fact that he had not been eating regularly, had lost a considerable amount of weight, and rarely showered or brushed his teeth.¹⁰ At a hearing on October 20, 2011, the magistrate found that Mr. Spinosa was still unable to aid and assist in his defense, and the charges were again dismissed without prejudice. The magis-

trate at that point granted a motion, agreed to by both the defense attorney and the district attorney, that placed Mr. Spinosa on a magistrate mental illness hold so that he could be sent to the Oregon State Hospital indefinitely or until the court in the person of this magistrate approved his release. The order cited no legal authority for the magistrate hold but instead referred to the district attorney's memo.⁴ The district attorney had argued that a permanent magistrate hold was necessary due to the "woeful inadequacy of Oregon law" regarding the civil commitment process.¹² The district attorney also noted that the civil commitment process could be problematic because it would remove a potentially dangerous offender from the criminal justice system.⁴ After Mr. Spinosa was sent to Oregon State Hospital under the magistrate hold, Disability Rights Oregon (DRO) learned of his situation, questioned the validity of the magistrate hold, and advised the hospital that a valid legal order to keep him in the hospital could be gained only through the civil commitment process.¹³ He was civilly committed in November 2011.⁴

Judge Hargreaves commented in his complaint that the only legal authority for keeping Mr. Spinosa in the hospital against his will was either as a criminal defendant found incompetent to stand trial or as a civil committee.¹³ The judge noted that the Order and Notification of Mental Illness Magistrate Hold, signed by the magistrate on October 20, 2011, had no legal foundation in Oregon law and deprived Mr. Spinosa of all his legal rights and protections under ORS 161.360-370.¹³ The complaint argued that this order and the rationale for it were nullified when the magistrate entered an "Order Finding Defendant Unfit to Proceed, Order of Dismissal Pursuant to ORS 161.3[7]0(9) and Order of Commitment" on October 31, 2001 (Ref. 13, p 3). These submissions meant that there was no longer an order, valid or invalid, requiring Mr. Spinosa to be at the Oregon State Hospital. The hospital then pursued a civil commitment process and obtained a valid court order for the civil commitment of Mr. Spinosa.¹³ In January 2012, the district attorney and the defense attorney submitted their responses to the Oregon State Bar regarding the ethics complaints filed against them.¹⁴ On January 25, 2012, the State Bar notified the district attorney and defense attorney that the Client Assistance Office found "sufficient evidence to support a reasonable belief that miscon-

duct may have occurred" and referred the matter to the Disciplinary Counsel's Office for further investigation.¹⁴ In May 2012, the magistrate vacated the hold order after the Oregon State Hospital filed a motion for its dismissal, and Mr. Spinosa's civil commitment was renewed in June.¹⁵ In late September 2012, the State Bar decided to pursue charges of ethics violations against the district attorney and defense attorney.¹⁶

***Jackson v. Indiana* and Dismissal Without Prejudice**

In *Jackson v. Indiana*, the U.S. Supreme Court held that "due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed" (Ref. 6, p 738). The Court ruled that a defendant can be held only for a reasonable period of time to determine whether there is a substantial probability of attaining competency to stand trial in the foreseeable future. If there is no substantial probability of the defendant's gaining or regaining competency to stand trial, then he must be either released or granted a civil commitment hearing if there is a concern that the defendant poses a risk of harm to self or others.⁶ The ruling in *Jackson* did not precisely define what a reasonable period of commitment would be for the purpose of competency restoration. Moreover, distinctions were not made on the basis of the gravity of the legal charges and the applicable statute of limitations. The case of *State of Oregon v. Donn Thomas Spinosa* illustrates limitations of *Jackson* and Oregon law when applied to charges with no statute of limitations.

The *Jackson* ruling did not address the disposition of the defendant's charges. The Court argued that this matter should be handled by the state court in light of the fact that Mr. Jackson had raised a "complete insanity defense," which the Supreme Court considered to be a question that was separate from his competency to stand trial and held that it should be based on "Indiana's law of criminal responsibility" (Ref. 6, p 739). The Court further opined that dismissal of charges against an incompetent defendant is usually based on the right to a speedy trial enshrined in the Sixth and Fourteenth Amendments to the United States Constitution or "the denial of due process inherent in holding pending criminal charges indefinitely over the head of one who will never have a chance to prove his innocence" (Ref. 6, p 740). The

Court noted that Mr. Jackson did not present these concerns to the state courts and the highest state court did not rule on the due process matter. Thus, the Court concluded that the state court should have “the first opportunity” to consider these issues (Ref. 6, p 740). Finally, the Court noted that defense counsel for an incompetent defendant could raise certain defenses, such as insufficiency of the indictment, or make certain pretrial motions that could result in the court’s quashing the indictment or dismissing the charges.⁶

Like the Supreme Court in *Jackson*, state courts have not held that charges must be dismissed with prejudice as a matter of due process against an incompetent defendant who is determined not to be substantially likely to regain competence in the foreseeable future.¹⁷ In *People v. Zapotocky*, the Supreme Court of Colorado ruled that an incompetent defendant does not have a right to dismissal of criminal charges if there is no substantial probability of the defendant’s regaining competency to stand trial in the foreseeable future.¹⁷ The court noted that allowing the criminal charges to remain pending does not preclude the defense attorney from asserting “any legal objection to the prosecution which is susceptible to determination prior to trial and does not require the personal participation of the defendant” (Ref. 17, p 1243). Therefore, the court ruled that the amended statute in question did not violate due process by stipulating that criminal proceedings against an incompetent defendant could be terminated only by motion of the district attorney once it was determined that there was a substantial probability that the defendant would not be restored to competency.¹⁷ Moreover, the court held that the amended statute did not contravene *Jackson* because “the legislature did not intend to give the district attorney control over the trial court’s decision to release or civilly commit an incompetent defendant” once it is determined that there is not a substantial probability that the defendant will be restored to competency in the foreseeable future.¹⁷

In *State v. Gaffey*, the Supreme Court of New Jersey stated that *Jackson* “does not mandate that the dismissal of criminal charges involving an incompetent must always be with prejudice to pass constitutional muster” (Ref. 18, p 517). The court noted that future prosecutions of charges previously dismissed without prejudice would be barred, when appropriate, by “constitutional considerations relating to

speedy trial, due process and fundamental fairness” (Ref. 18, p 518). The court stated that a weighing of all the relevant evidence and facts of a case could lead a court to exercise its discretion properly in choosing to dismiss an indictment against an incompetent defendant without prejudice or hold the indictment in abeyance instead of dismissing the charges with prejudice. The court explained that:

... [this] discretionary determination should be made upon a balancing of the strength of evidence that defendant’s prospects for regaining competency appear hopeless, the period of time during which defendant has remained incompetent, the nature and extent of defendant’s institutionalization, the likelihood of prejudice to the defendant in the trial following any delay, the gravity of the crimes charged and the public interest in prosecuting the charges [Ref. 18, p 518].

On a similar note, in *People v. Williams*, the First District Appellate Court of Illinois held that *Jackson* could not be “read as requiring a State to either try unfit defendants or dismiss the pending criminal charges against them.”¹⁹ In *State ex rel. Haskins v. County Court*, the Supreme Court of Wisconsin acknowledged that it is “a rather pointless and a cruel application of the law, as well as an additional burden on prosecutors and courts, to keep pending criminal charges that will never be brought to trial.”²⁰ However, the court believed this matter to be a “legislative problem,” in that it is up to the legislature to consider “the desirability of authorizing the dismissal of charges when a commitment is terminated under *Jackson*” (Ref. 20, p 584). The court concluded that, in the absence of a statute to the contrary, “there is no authority for a trial judge to sua sponte order a dismissal” (Ref. 20, p 584).

Discussion

The principles embodied in *Jackson v. Indiana* are reflected in ORS (Oregon Revised Statute) 161.370, under which a mentally ill defendant who is found incompetent to stand trial cannot be committed for competency restoration for a period exceeding the maximum possible sentence if convicted or three years, whichever is shorter.²¹ If the defendant does not gain or regain the capacity to stand trial at the end of this period, the charges are dismissed without prejudice, and the defendant is then either released or civilly committed.²² This statute posed unique problems in the case of Mr. Spinoso who was charged with murder and thus could be reindicted at any time for

the remainder of his life, given the fact that a murder charge has no statute of limitations.

If he had gained or regained competency to stand trial, he probably would have qualified for an insanity (guilty except for insanity, GEI) plea pursuant to ORS 161.295.²³ A GEI plea constitutes an affirmative defense according to ORS 161.305.²⁴ A defendant found to be GEI would be placed under the supervision of the Psychiatric Security Review Board (PSRB),²⁵ which would monitor the defendant's progress and response to treatment and make decisions about appropriate placement on the basis of the risk of danger to self or others posed by the defendant.

In the end, Mr. Spinoso's case does not lend itself to the adoption of a clear policy that would remove him from the legal limbo that results when the statute of limitations has not run its full course. The defense attorney could have made a motion to dismiss the charges based on factors such as prosecutorial misconduct or repeated indictments constituting prosecutorial harassment, such a motion could be denied, and even if it were granted, Mr. Spinoso would have been likely to remain in jail for a significant time, while the judge reviewed his case and probably would have continued to decompensate as a result of refusing medication. A more balanced approach would prevent such an outcome while protecting the defendant's rights and the state's interest in protecting the public from dangerous offenders. To protect individuals facing circumstances similar to those of Mr. Spinoso, Oregon law could be amended to add a requirement that a defendant, whose charges were dismissed without prejudice because it was found that he would never be able to gain or regain competency to stand trial pursuant to ORS 161.370, could not be reindicted on those charges in the future without the court's first finding that the defendant had gained or regained competency to stand trial and was thus fit to proceed.

A proposal made by the Multnomah County District Attorney and the Clackamas County District Attorney would amend Oregon law to allow pretrial detainees, who are incompetent to stand trial, to remain in the custody of the Oregon State Hospital "for the same period of time as the statute of limitations of the offense for which the defendant is charged, subject to trial court hearings and appellate court review."²⁶ The executive director of the advocacy organization DRO (Disability Rights Oregon)

argued that the goal of the Oregon State Hospital is not to keep individuals in its custody indefinitely, but to help them recover so that they are no longer dangerous.²⁷ It should also be noted that the aforementioned proposal runs counter to the ruling in *Jackson* that a pretrial detainee could be held only for a reasonable period of time necessary to determine whether there is a substantial probability of attaining competency to stand trial in the foreseeable future.⁷

On a national level, the American Bar Association (ABA) proposed that "permanently incompetent defendants" who are charged with minor crimes should be released or civilly committed.²⁸ In contrast, permanently incompetent individuals charged with a "felony causing or seriously threatening serious bodily harm" should be tried and, if convicted, should be committed under the procedures and criteria applicable to those found not guilty by reason of insanity.²⁸ However, it is doubtful whether it is constitutional under current law to try and convict an incompetent defendant. In *Pate v. Robinson*, the U.S. Supreme Court held that the respondent, who had been convicted of the murder of his common law wife and sentenced to life imprisonment, was deprived of due process of law under the Fourteenth Amendment, because the trial court failed to afford him a competency hearing despite the fact that the "evidence raised a sufficient doubt as to respondent's competence to stand trial" (Ref. 29, pp 375–6). Moreover, the Court held that the "conviction of a legally incompetent defendant violates due process" (Ref. 29, p 375). However, some commentators have argued that the Courts in *Pate* and *Drope v. Missouri* focused on the procedural question of when a hearing to determine competency must be held rather than the substantive one of whether a person may ever be tried despite incompetency, and therefore, the language in *Pate* stating that convicting an incompetent person violates due process is *dictum* and thus constitutes an authoritative though not binding opinion under the principle of *stare decisis*, because it is not essential to the decision.³⁰ In *Drope v. Missouri*, the U.S. Supreme Court held that the trial court deprived the defendant of due process by failing to order an evaluation for competency to stand trial after he was hospitalized following an attempted suicide and consequently missed a portion of his trial. The Court noted that "a person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him,

to consult with counsel, and to assist in preparing his defense may not be subjected to a trial” (Ref. 31, p 171).

In Oregon, to protect society from potentially dangerous offenders, the law could also be amended to allow individuals such as Mr. Spinosa, who would otherwise have qualified for a GEI plea if they had been fit to proceed, to be placed under the supervision of the PSRB. The PSRB would have the authority to order the civil commitment or conditional release of such individuals, monitor their progress, and make decisions regarding most appropriate placement. This possibility would have the same problems as discussed regarding the ABA proposal. Mr. Spinosa’s case indicates that the least that might be required is for statutory changes that would mandate that defense attorneys obtain an evaluation of criminal responsibility for a possible insanity defense during the initial period of prolonged incompetency so that information would be available at any point in the future if and when the defense attorney decided that it was appropriate to make such evaluations available to the trial courts.

We close by returning to Judge Hargreaves’ complaints against the prosecutor, defense attorney, and the magistrate involved in sending Mr. Spinosa back to the Oregon State Hospital on a magistrate’s hold. While the conclusions from the investigation of these events and the consequent charges of ethics violations filed by the State Bar against the district attorney and defense attorney are pending, the preliminary evidence does not support the legality of this sort of novel commitment procedure, which fails to meet the requirements of Oregon statutes and established Supreme Court precedent. The records suggest that the prosecutor was trying to maintain control of a murder case that he anticipated would continue to go unsuccessfully prosecuted if Mr. Spinosa was again civilly committed. A lingering question is the nature of the arrangements and obligations of the hospital when staff apparently notified the prosecutor of the intent to discharge Mr. Spinosa into a secure community placement. Once Mr. Spinosa was reindicted on an aggravated murder charge, the defense attorney appeared primarily motivated to prevent his client from a possible death penalty trial. In the end, Mr. Spinosa is where he has been since 1997, and we anticipate that the 2013 Oregon Legislature will be asked to grapple with the questions surrounding his situation.

In conclusion, we have highlighted an aggravated murder case from Oregon that demonstrates the breakdown and inadequacies in state civil and criminal commitment procedures for managing individuals who have been charged with serious crimes (with no statute of limitations) and are unlikely to be restored to a state of competency to stand trial. In our case, a legal maneuver that was unsupported in case law or legislative action was potentially the judicial system’s attempt to address glaring inadequacies. While each of the participants in the judicial series of events had competing and colluding interests, the sum of the events, in our opinion, do not meet constitutional or established treatment-oriented protections in our tradition of civil commitment law. Charges of ethics violations filed by the State Bar against the district attorney and defense attorney have yet to be resolved. This case demonstrates how an individual in this situation can oscillate indefinitely between criminal pretrial detention and civil commitment, a perpetual state that exists outside of the basic rights clarified in *Jackson v. Indiana*. This dilemma is likely to be experienced in all criminal justice systems and calls for more attention, research, and action.

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