

offending juvenile experienced may be replicated during incarceration. Forensic evaluations, therefore, should assess not only how inmates have matured and developed, but also what opportunities exist to promote that growth and opine about the differences between characterological and environmental flaws.

In a prison that supports rehabilitation, maturation might be indicated by completed General Education Diploma courses, additional coursework, vocational training, and participation in victim awareness and spiritual programs. Behavioral records throughout incarceration also provide valuable data in making new sentencing recommendations for offenders. However, in settings where resources are scarce, the indication of change will be harder to ascertain.

Certainly, one aspect of a forensic resentencing evaluation is assessment of risk and the plan for risk management. Risk assessment of someone confined in a punitive environment since adolescence presents further challenges. Usual risk assessment measures may not apply. Consider, for example, the Psychopathy Checklist-Revised (PCL-R). Incarcerated as juveniles, adults may not have the opportunity to incur many arrests or demonstrate dysfunctional relationships. On the other hand, coming of age in a prison environment may alter the determination of callousness, glibness, and other antisocial personality features. The forensic expert's role in these cases presents opportunities to develop interdisciplinary strategies for assessment. Further, these Supreme Court decisions have created a need for correctional psychology and psychiatry to develop programming to promote maturation and rehabilitation for those who might have a new opportunity for return to society.

Another critical concern arises from the implicit assumptions in the Court's reasoning in these decisions: the criminal behavior is viewed as the result of an underdeveloped person who has the potential to develop and progress toward productive adulthood. What is not addressed by these decisions is the impact of mental illness and cognitive deficits on development, especially development in prison.

In general, individuals with mental illness have a harder time in prison. They often incur disciplinary tickets, even new charges, and are familiar to correctional disciplinary boards. Persons with mental illness may not show a trajectory of maturation and rehabilitation, not because they are irreparably corrupt, but because of untreated psychiatric disorders.

In resentencing considerations, might mental illness be considered a mitigating circumstance, or would poor adjustment in the correctional environment, as the result of mental illness, ultimately be damning? If the latter prevails, a future Supreme Court case considering whether lengthy incarcerations for juveniles with mental illness violates the Eighth Amendment might be expected.

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## The Weight of a Consultative Psychological Evaluation in Disability Claims

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### The United States Court of Appeals for the Tenth Circuit Rules that the Administrative Law Judge Failed to Evaluate Properly the Consultative Evaluation of a Psychologist in Denying Disability Benefits

In *Ringgold v. Colvin*, 644 F. App'x 841 (10th Cir. 2016), the United States Court of Appeals for the Tenth Circuit considered how to weigh the opinion of a consulting psychologist in determining an individual's eligibility for Social Security disability benefits. The court reversed and remanded an Oklahoma district court's decision to deny benefits, finding that the lower courts and Social Security Administration did not use the proper standard for assessing the weight of the psychologist's evaluation.

#### *Facts of the Case*

Patricia Ringgold was 41 years old in July 2010, when she applied for Social Security disability benefits (hereinafter "benefits"). She had an 11th-grade education and experience working in various jobs before filing her disability claim, including a three-year position in customer service at a telephone company. She had not worked since October 2009, allegedly because of depression and anxiety. She reported experiencing symptoms of insomnia, anxiety, poor motivation, and social

withdrawal since approximately 2003, and she had inconsistently engaged in mental health treatment over the years. She also had a significant history of methamphetamine and marijuana use.

Ms. Ringgold's application for benefits was initially denied. She appealed the denial and was granted a *de novo* hearing before an administrative law judge (ALJ), a standard part of the Social Security Administration's appeals process. The ALJ reviewed her case and affirmed the denial, but later the appeals council remanded the case to the ALJ with instructions to obtain another opinion from a consulting psychologist and explain the weight given to the opinion.

Ms. Ringgold was evaluated by Dr. Stephanie Crall in February 2013. The ALJ held a hearing that September, where Ms. Ringgold and a vocational expert testified. In addition, the ALJ reviewed several medical opinions about Ms. Ringgold's mental health, including Dr. Crall's report, a September 2010 report from Dr. Cynthia Repanshek (another consulting psychologist), and outpatient mental health records from Ms. Ringgold's treatment at Hope Community Services.

In December 2013, the ALJ issued a report affirming the Social Security Administration's initial decision to deny benefits. The ALJ used the Social Security Administration's five-part test for disability determinations, concluding that Ms. Ringgold had depression, anxiety, and other mental conditions, but that she had enough residual functional capacity to perform some types of work. The ALJ noted inconsistencies between the accounts Ms. Ringgold gave of her psychiatric history and illicit drug use to various evaluators. She told Dr. Repanshek that she used methamphetamine and marijuana heavily, but she later minimized her substance use when evaluated by Dr. Crall. Records from Hope Community Services noted that Ms. Ringgold had sores on her arms (a typical sign of methamphetamine use) in February 2013, around the same time that she told Dr. Crall she was no longer using drugs.

After reviewing all of the available evidence, the ALJ found Ms. Ringgold's report of her functional impairments not to be credible. In reaching his conclusions, the ALJ appeared to discount Dr. Crall's opinion that Ms. Ringgold had "marked" impairment in her ability to complete complex work-related tasks and interact with people. The ALJ determined that Ms. Ringgold was not disabled within the meaning of the Social Security Act and that she

could work in jobs that require minimal public interaction, such as hospital cleaning and price marking.

Ms. Ringgold appealed the ALJ's decision to an Appeals Council, which declined to hear the case. She then appealed to the United States District Court for the Western District of Oklahoma, which reviewed the record *de novo*. In June 2015, the court affirmed the Social Security Administration's decision to deny benefits. Ms. Ringgold appealed to the Tenth Circuit Court of Appeals, arguing that the ALJ had erred in giving too little weight to the opinion of Dr. Crall.

In her appeal, Ms. Ringgold argued that the ALJ failed to evaluate Dr. Crall's opinion properly, citing the detailed procedural rules for making Social Security disability determinations. Because Dr. Crall had evaluated Ms. Ringgold in person as opposed to basing her conclusions on a medical record review alone, her opinion is considered an "examining medical source opinion" for the purpose of benefits determinations. Such "examining source" opinions are presumptively given greater weight than doctors' opinions based solely on record review. To disregard the findings of an examining source, the ALJ must explicitly state reasons for discounting or dismissing the opinion. Ms. Ringgold argued that the ALJ had not given any reason in his report for discounting Dr. Crall's findings, instead focusing on the reasons he doubted Ms. Ringgold's credibility.

The Social Security Commissioner responded to these arguments by noting several reasons that the ALJ could have discounted Dr. Crall's findings. For example, Dr. Crall did not make any effort to verify Ms. Ringgold's claims with outside sources, such as her treating mental health providers. The Commissioner also noted that Dr. Crall's findings were inconsistent with "every other medical source opinion in the record" (*Ringgold*, p 846). Finally, the Commissioner argued that, even if the ALJ had erred in discounting Dr. Crall's opinion and mistakenly found Ms. Ringgold capable of unskilled work, the error was harmless because enough such jobs are available in the economy for Ms. Ringgold to find work.

#### *Ruling and Reasoning*

The Tenth Circuit Court decided the case based on the parties' briefs alone, without oral argument. The court ultimately agreed with Ms. Ringgold, finding that the ALJ erred in his examination of Dr. Crall's opinion. The court noted that the ALJ has the

burden of providing specific reasons for discounting the opinion of an examining source, particularly when ordered by the Appeals Council to solicit the additional opinion. The ALJ did not do this in Ms. Ringgold's case. Although the Social Security Commissioner's brief highlighted several potential flaws in Dr. Crall's opinion that could have served as a basis for discounting her opinion, this reasoning came *post hoc*, after the ALJ's decision was already made. The ALJ himself did not give any specific reason for his disregarding Dr. Crall's opinion. He could have pointed to some of the concerns expressed by the Commissioner, but he did not.

The Tenth Circuit Court of Appeals determined that the ALJ's error was not harmless. The court reasoned that if Dr. Crall's opinion had been given sufficient weight, the ALJ might have found that Ms. Ringgold was incapable of semiskilled jobs, such as cleaning and price marking. For example, since Dr. Crall noted that Ms. Ringgold had marked difficulty interacting with supervisors and the public, it is unlikely that she could perform well in any job. Ms. Ringgold had a long history of conflict with supervisors and leaving jobs, which provided further support for Dr. Crall's findings. The court of appeals reversed the district court's decision and remanded the case with instructions that the Social Security Administration conduct further proceedings giving sufficient weight to Dr. Crall's opinion.

#### Discussion

This case highlights the importance that courts place on proper consideration of all available medical opinions in Social Security disability determinations. The Tenth Circuit Court of Appeals found the ALJ in error, despite his review of multiple sources of evidence, including Ms. Ringgold's testimony about her work history, daily functioning, and limitations; the testimony of a vocational expert; medical records from her treatment providers; and another consulting psychologist's opinion. The sole error in Ms. Ringgold's six-year-long process of benefits applications, denials, and appeals was the ALJ's failure to state explicitly why he discounted the opinion of one psychologist. This one error was sufficient for the Tenth Circuit Court of Appeals to reverse the lower court's decision.

The same appellate court had considered a similar question in *Best-Willie v. Colvin*, 514 F. App'x 728 (10th Cir. 2013), where it affirmed a Utah district court's decision to deny Social Security disability

benefits. In that case, Michelle Best-Willie argued that the ALJ had erred in discounting the opinions of her two treating physicians: a primary care doctor and a psychiatrist. Using an analysis similar to that articulated in *Ringgold*, the court concluded that the ALJ's decision was not in error. In his decision, the ALJ had stated explicitly that the medical providers' opinions supporting Ms. Best-Willie's disability application were not to be given controlling weight because their findings were inconsistent with the totality of the medical records and because they did not provide objective evidence of functional limitations. Since the ALJ clearly articulated his reasoning for discounting the treating physicians' opinions, the appellate court concluded that he had considered all the available evidence and appropriately reached a determination about Ms. Best-Willie's disability application.

The court's insistence upon on clear reasoning in Social Security benefits decisions is relevant for forensic evaluators. Forensic psychiatrists and psychologists who perform consultative evaluations in these cases are also well advised to articulate the basis for their conclusions, thereby setting the stage for later judicial opinions. For example, a forensic consultant evaluating Ms. Ringgold should describe her functional limitations in detail, account for inconsistencies between her statements and other medical records, and state the reasoning for an opinion as to whether the functional deficits are a result of depression or substance abuse. Including this type of analysis may persuade the ALJ to assign more weight to the opinion. Without it, consultants run the risk of having their conclusions discounted during subsequent judicial reviews.

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## Expansion of the Duty to Protect Includes Foreseeable Victims in the Zone of Danger

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