

for such cases. The defense may have very well been right that treatment of a person with mental illness is more important than incarceration, but the law as it currently stands in Virginia, and most jurisdictions, does not ensure this. Perhaps mental health professionals can advocate for such legislative prioritization.

Improper Dismissal of a *Pro Se* Due Process Claim After Forced Medication Injections

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Whether the Court Can Dismiss a *Pro Se* Pretrial Defendant's Due Process Claim from Forced Injection of Medications Based on a Report of Prison Official's Investigation

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In *Winkel v. Hammond*, 704 Fed.Appx. 735 (2017), an unpublished opinion by the Tenth Circuit, the court considered constitutional challenges to involuntary administration of medication. The U.S. District Court for the District of Kansas dismissed the due process claim of Mr. Robert Winkel, a *pro se* pretrial defendant, related to forcible injections of antipsychotic medications based on an investigative report filed by prison officials. The plaintiff appealed, stating that the trial court failed to hold a hearing to determine whether forcibly medicating him was necessary. The U.S. Court of Appeals for the Tenth Circuit reversed and remanded the case, stating the district court improperly dismissed the plaintiff's claim based on the prison official's report without providing him an opportunity to respond.

Facts of the Case

Robert Winkel filed a due process claim while he was incarcerated at El Dorado Correctional Facility. He alleged that while he was being evaluated at Larned State Security Hospital (LSSH) for compe-

tency to stand trial, his due process rights were violated when they forcibly administered antipsychotic medications. The district court requested that officials at LSSH review the allegations and prepare a report based on *Martinez v. Aaron*, 570 F.2d 317 (10th Cir. 1978). District courts use *Martinez* reports when a *pro se* plaintiff's complaint requires identification or clarification of their claim.

LSSH filed the *Martinez* report, and three days later the district court entered an order dismissing Mr. Winkel's claim for "failure to state a claim for relief." The court cited the *Martinez* report and ruled that after review of the full records, Mr. Winkel was afforded his due process rights related to the two forcible injections of medication in question. The court wrote:

Staff repeatedly addressed plaintiff, and there was consensus among medical staff that the prescribed medication was both appropriate and necessary to allow plaintiff to adequately care for himself and to avoid any harm to others. The materials show the injections were the result of an administrative determination that considered the relevant aspects of plaintiff's medical condition and the need for the prescribed medication (*Winkel*, p 736, citing R.vol.1, 161).

Mr. Winkel appealed, arguing that his case was improperly dismissed based on the fact that the court used the *Martinez* report in determining whether his complaint was sufficient to state a claim, which thus denied him the opportunity to respond to the facts contained in the report.

Ruling and Reasoning

The U.S. Court of Appeals, Tenth Circuit, delivered the ruling that reversed the district court's ruling that Mr. Winkel had failed to state a claim based on the contents of the *Martinez* report. They remanded the case back to the U.S. District Court for the District of Kansas.

The Tenth Circuit's determination of whether a *pro se* complaint fails to state a claim relies on the standard applied under Fed.R. Civ P. 12(b)(6) (2014). They must look at the specific allegations in the complaint to determine whether the claim is plausible, and in doing so "we must accept the allegations of the complaint as true and construe those allegations, and any reasonable inferences that might be drawn from them, in the light most favorable to the plaintiff" (*Gaines v. Stenseng*, 292 F.3d 1222, 1224 (10th Cir. 2002)). The court of appeals stated that the only way a *pro se* complaint can fail to state a claim is when the plaintiff challenges prison policies

or established procedures. Mr. Winkel's claim did not, and thus he was entitled to respond to the facts in the *Martinez* report. They cite *Swoboda v. Dubach*, 992 F.2d 286 (10th Cir. 1993) to explain that the district court may not look to a *Martinez* report or any other pleading outside of the complaint itself, hence the district court erred in using only the report to dismiss his complaint.

The appeals court then look at Mr. Winkel's claim outside of the content in the *Martinez* report, stating the district court's decision is not reversible unless the claim can be justified without outside materials. The court ruled that Mr. Winkel does have a plausible Fourteenth Amendment due process claim. To clarify the appropriate circumstances in which a person can be involuntarily medicated, they reference *Washington v. Harper*, 494 U.S. 210 (1990) and explain that the state may treat a prison inmate with involuntary psychiatric medications if the inmate is a danger to self or others, and the treatment is in the inmate's medical interest. They cite *United States v. Bradley*, 417 F.3d 1107 (10th Cir. 2005), saying that under certain circumstances the state may involuntarily medicate pretrial detainees to restore competency to stand trial even when they are not dangerous. Furthermore, they cite *Sell v. United States*, 539 U.S. 166 (2003) to discuss the trial court having a hearing to determine whether involuntary medication for the purpose of competency restoration is necessary to further important governmental trial-related interests.

Mr. Winkel's complaint against LSSH employees with regard to forcible injection of medication relies on his assertion that he was not dangerous, and that the district court failed to hold a hearing to determine whether medicating Mr. Winkel was necessary and appropriate. Mr. Winkel alleged that he was medicated against his will to become "more receptive" and to get him to be less resistant to scheduled medications. The appeals court asserted that he had a plausible due process claim and that the district court erred in dismissing his complaint.

Discussion

This case underscores the importance of due process for the psychiatric patient in correctional and forensic settings and of treating their claims as legitimate. It is noteworthy that the plaintiff in the matter was both incompetent to stand trial and was operating as a *pro se* litigant. The need to review the com-

plaints of individuals like this is no less important, even when there is no legal representation. Furthermore, the issues pertaining to this review highlight that the clinical and legal issues of competence to stand trial and restoration of competence are distinct. Although the court's review required a legal analysis of the relevant rules regarding the plaintiff's complaint, it is an important reminder that clinically, in both general and forensic psychiatry, the dismissal of a patient's or evaluatee's claims as delusional, manipulative, retaliatory, etc., can often be a reflexive thought and a convenient path. It is helpful to have a reminder to look at complaints fully and from all perspectives, and to follow protocols appropriately. Regardless of whether Mr. Winkel's claim ultimately was upheld after the issue was remanded for further consideration, the crux of the issue is that his claim warranted a more complete examination and might be plausible.

Determining Intellectual Disability for Capital Defendants

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Ohio Unreasonably Applied the Supreme Court's Three-Part Standard Established in *Atkins v. Virginia* to Find That the Defendant Was Not Intellectually Disabled and Deny Habeas Relief from Capital Sentence

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In *Hill v. Anderson*, 881 F.3d 483 (2018), the Sixth Circuit Court of Appeals considered whether Ohio correctly reviewed the defendant's writ of *habeas corpus* that sought relief from capital sentencing. Mr. Danny Hill challenged his capital sentence, claiming he is intellectually disabled as initially established in *Atkins v. Virginia*, 536 U.S. 304 (2002) and subsequently confirmed in later cases. The Sixth Circuit agreed, reversed the judgment of the district court, and ruled that Hill was entitled to *habeas cor-*