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## The Right to Self-Representation in Civil Commitment Proceedings

**Matthew E. Hirschtritt, MD, MPH**  
Fellow in Forensic Psychiatry

**John R. Chamberlain, MD**  
Professor of Psychiatry

*Psychiatry and the Law Program*  
*Department of Psychiatry and the Weill Neuroscience Institute*  
*University of California San Francisco*  
*San Francisco, California*

**A Montana Statute Prohibiting a Waiver of Right to Counsel in Civil Commitment Proceedings Is Constitutional**

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The Montana Supreme Court, in *In re S.M.*, 403 P.3d 324 (Mont. 2017), affirmed the lower court's refusal to allow S.M., a defendant against a petition for involuntary commitment, to waive his right to counsel. The court ruled that the relevant Montana statute does not violate the claimant's Sixth or Fourteenth Amendment rights.

### Facts of the Case

In early November 2015, S.M. told his friend that he intended to commit suicide and asked his friend to watch his dog. In response, his friend called 9-1-1. When the police arrived at S.M.'s residence, they found a chair with a noose suspended above it. S.M. told the officers he intended to commit suicide. The police brought S.M. to the hospital. There, S.M. denied any self-harm intent but stated "that he does have a rope long enough and has been looking for someone to look after his dog when he is gone" (*S.M.*, p 325). He agreed to consider outpatient treatment. The mental health professional who assessed S.M. believed outpatient treatment would be inadequate. Thus, the state petitioned to involuntarily commit S.M. The Montana District Court determined there was probable cause for the petition and appointed a public defender for S.M.

During the initial hearing, S.M. requested that the district court dismiss his appointed counsel and in-

stead allow him to represent himself with the assistance of "shadow" or "standby" counsel only. The court acquiesced to S.M.'s request, but S.M.'s standby counsel filed a notice with the court that, pursuant to Mont. Code Ann. § 53-21-119(1) (1977), there was no right to waive counsel in involuntary commitment proceedings. The district court informed S.M. that he could not, in fact, represent himself, but added that the hearing would proceed "in a fashion that doesn't walk all over the top of your ability to represent yourself" (*S.M.*, p 326). S.M. contended that he had a right to self-representation but agreed that he needed mental health treatment. During a recess, S.M. met with his counsel and the prosecutor. Together, the parties arrived at a stipulation in which S.M. agreed to placement in an outpatient mental health treatment facility. All parties (the state, S.M., and S.M.'s appointed counsel) signed this agreement, which the district court approved. S.M. subsequently appealed to the Montana Supreme Court, challenging the order and the prohibition against waiving counsel in civil commitment proceedings as a violation of his rights under the Sixth and Fourteenth Amendments.

### Ruling and Reasoning

The Montana Supreme Court affirmed the district court's order of commitment and upheld the constitutionality of Mont. Code Ann. § 53-21-119(1) (1977). The court highlighted multiple provisions in Montana statutes protecting defendants in civil commitment proceedings, including the right to be represented by counsel per Mont. Code Ann. § 53-21-115(5) (1977). Further, the court agreed with the district court that the U.S. Constitution's Sixth Amendment right to waive appointed counsel pertains to criminal prosecutions, not civil commitment proceedings. Quoting the opinion in *Addington v. Texas*, 441 U.S. 418 (1979), however, the court also acknowledged that civil commitment represents "a significant deprivation of liberty that requires due process protection" (*Addington*, p 425). Therefore, "a constitutional right to self-representation in civil commitment proceedings, if any exists, must be found in the Fourteenth Amendment Due Process Clause [ . . . ], not in the Sixth Amendment" (*S.M.*, p 327).

The court proceeded to examine S.M.'s claim that his Fourteenth Amendment due process rights had been violated by Montana's statute prohibiting self-

representation in civil commitment proceedings. Looking to *Washington v. Glucksberg*, 521 U.S. 702 (1997), the court asserted the highest level of substantive due process scrutiny, referred to as “strict scrutiny,” applied only to rights that are “objectively deeply rooted in the Nation’s history and tradition” (*Glucksberg*, p 720–721). Thus, the question became whether the right to waive counsel in civil commitment proceedings is “deeply rooted in [the] Nation’s history and tradition” (*Moore v. City of East Cleveland*, 431 U.S. 494, (1977), p 503) and is a fundamental liberty interest. The court found the right to waive counsel in such proceedings is not deeply rooted in U.S. history and is therefore not a fundamental liberty interest. To support this opinion, the court referenced widely divergent statutes on this issue from multiple states. The court concluded that “[t]his disparate case law shows that there is no universal agreement among the states whether a person in a civil commitment proceeding has the right to proceed *pro se*” (*S.M.*, p 329).

The court outlined the history of civil commitment proceedings in the United States from the colonial era through the current era. Over this period, individuals with mental illness have received increased protection to ensure appropriate treatment and to avoid undue detention. Therefore, the court stated, “strong procedural safeguards to protect the interests of those facing involuntary civil commitment are a rather recent development and have focused on improving the fairness and accuracy of the process” (*S.M.*, p 330). The court characterized Montana’s procedural protections in civil commitment hearings as “designed to protect a respondent’s civil and legal rights, as well as the safety of the community, while ensuring the orderly consideration and prompt disposition of petitions for involuntary confinement” (*S.M.*, p 330). Furthermore, the court reasoned the state has a vested interest in “seeing that proceedings lead to fair and accurate outcomes” (*S.M.*, p 330). The court said that “self-representation in civil commitment proceedings would increase the likelihood of an unfair or erroneous result rather than enhancing the fairness or accuracy of the proceeding” (*S.M.*, p 330). The court also pointed out that *pro se* representation in these proceedings may needlessly prolong hearings, especially if the respondent subsequently requests a retrial with counsel.

Having established that the right to waive counsel in civil commitment proceedings is not deeply rooted in U.S. history and thus is not a fundamental

right, the court found that the statute need not be examined under the strict scrutiny standard. Rather, the court concluded that the statute is appropriately examined under a lower level of scrutiny imposed by the due process clause. This lower level of scrutiny, referred to as rational basis scrutiny, specifies that a statute must be rationally related to a legitimate state interest. In this case, the court concluded that respondents “should be represented by counsel to preserve fairness, integrity, and accuracy in the civil commitment process” (*S.M.*, p 331). The court found representation by counsel as required by Montana statute is rationally related to a legitimate government interest. Therefore, “S.M.’s facial challenge must fail” (*S.M.*, p 331). The court added that while the respondent in a civil commitment proceeding may not waive his right to counsel, he may still “participate extensively” in the proceedings, as S.M. had in his.

#### Discussion

As the court highlights in this case, states vary as to whether respondents in civil commitment hearings have a right to waive counsel and represent themselves. Most states have statutes that guarantee counsel in civil commitment proceedings (Abel LK, Rettig M: State statutes providing for a right to counsel in civil cases. *Clearinghouse Rev J Poverty Law & Pol’y*, July–August: 245–70, 2006). Fewer states have statutes that expressly prohibit self-representation by respondents in such proceedings. States may choose to provide respondents in civil commitment proceedings with the right to waive counsel.

The court’s opinion in this case makes reference to the fluctuating nature of mental illness and the corresponding functional impairments that can be observed in psychiatric patients. Thus, the court’s opinion highlights the fact that respondents in civil commitment proceedings are likely to need the assistance of counsel to ensure adequate protection of their due process rights. The court’s opinion further recognizes that, despite any impairments individuals with mental illness may be experiencing, they have an interest in the proceedings. In addition, the court recognizes that those with mental illness should be allowed to actively work with their counsel in the preparation of their defense. Psychiatrists can play a vital role in this process by educating patients, attorneys, and courts about the nature, impact, and treat-

ment of mental illness. By doing so, they can simultaneously advocate for the protection, treatment, and empowerment of their patients.

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## Evidentiary Requirements for Applicants Seeking Postconviction Relief on Mental Health Bases

**Katie M. Chambers, MD**

*Fellow in Forensic Psychiatry*

**Kaustubh G. Joshi, MD**

*Associate Professor of Clinical Psychiatry*

*Associate Director, Forensic Psychiatry Fellowship*

*University of South Carolina School of Medicine*

*Columbia, South Carolina*

**Marie E. Gehle, PsyD**

*Chief Psychologist*

*South Carolina Department of Mental Health*

*Columbia, South Carolina*

***Applicant's Testimony that His Guilty Plea Was Rendered Involuntary due to Medications Given While in Jail is Insufficient Basis Alone for Court to Grant Relief***

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In *Garren v. State*, 813 S.E.2d 704 (S.C. 2018), the state appealed the postconviction relief (PCR) court's decision granting Mr. Garren relief. The South Carolina Supreme Court considered whether it was an error for the defendant's counsel to fail to seek a competency evaluation and whether the defendant's guilty plea was rendered involuntary because of the medications he purportedly took.

### Facts of the Case

In June 2012, the Pickens County Sheriff's Office responded to a call from neighbors involving Brandon Garren and his live-in girlfriend (the victim). The neighbors reported that they heard the victim screaming and observed her wandering in the yard. The victim reported to police that Mr. Garren held her against her will for a week, threatened to kill her, and beat her repeatedly. Her injuries were extensive, and she required treatment in an intensive care unit.

Mr. Garren faced several charges from this incident. Following plea counsel's negotiations with the

state, the most serious charges were dismissed and he pleaded guilty to criminal domestic violence of a high and aggravated nature and assault and battery of a high and aggravated nature. During the plea proceedings, plea counsel told the judge that Mr. Garren and the victim had abused prescription medications at the time of the incident; plea counsel also reported that Mr. Garren suffered from various physical health problems and "obviously ha[d] some mental problems" (*Garren*, p 707).

Mr. Garren informed the plea judge that he understood the charges to which he was pleading guilty, the constitutional rights that he was waiving, and the possible sentences that he could receive. He informed the judge that he was "most satisfied" with plea counsel's services and that he was not under the influence of any drugs or alcohol at the time of his plea.

Despite plea counsel's request for a lenient sentence, the court sentenced Mr. Garren to concurrent prison terms of 15 years for assault and battery of a high and aggravated nature and 10 years for criminal domestic violence of a high and aggravated nature. Mr. Garren did not file a direct appeal. Instead, he filed a PCR application alleging that plea counsel was ineffective for failing to request a mental health evaluation and because his ability to understand the plea proceedings was impaired by medications that he was given at the jail, rendering his guilty plea involuntary.

At the PCR hearing, plea counsel testified that, at the time of the plea, there was no indication that Mr. Garren was suffering from mental health concerns that necessitated further evaluation. In addition, plea counsel testified that Mr. Garren gave no indication that he had any difficulty understanding the plea proceedings.

At the PCR hearing, Mr. Garren testified that he was unhappy with the length of his sentence. He reported that he was unsure if he had explicitly requested a competency evaluation but thought that his mother had made such a request; his mother did not testify at the PCR hearing. Mr. Garren offered no evidence of what he expected a mental health evaluation would show, had one been ordered. He testified that he did not understand or have any recollection of the plea proceedings because of medications that he had received at the county jail. Although his PCR application identified his medical records as further support for his claim, he did not offer into evidence his medical records or other collateral information documenting that he took medication on the day of the plea or identifying the type of medication,