

Prolonged Pretrial Detention Violates Fourteenth Amendment

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Detainment in Jail Awaiting Competency Restoration Treatment Past Seven Days Violates Substantive Due Process Rights

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In *State v. Hand*, 429 P.3d 502 (Wash. 2018), the Supreme Court of Washington considered whether an individual's substantive due process rights under the Fourteenth Amendment were violated as the result of a prolonged period of detainment while awaiting competency restoration treatment. They also addressed whether such a violation would warrant the dismissal of the individual's charges with prejudice. The court ruled that the individual's substantive due process rights were violated. The court further held that dismissal with prejudice was not an appropriate remedy for such a violation based on the facts of the case.

Facts of the Case

Anthony Hand was charged with first-degree escape and unlawful possession of a controlled substance on September 22, 2014. After undergoing an evaluation in jail, the court determined he was incompetent to stand trial on December 24, 2014, and subsequently ordered Mr. Hand to be admitted to Western State Hospital (WSH) within 15 days for a period of up to 45 days for competency restoration treatment.

Mr. Hand filed a motion on February 11, 2015 to dismiss his charges or order a show cause hearing due to violation of his substantive due process rights, as he continued to be held in jail without admission to WSH for competency restoration treatment. The trial court found no due process violation, resulting in a denial of the motion to dismiss, but the court ordered a show cause hearing. During the show cause hearing on February 25, 2015, Dr. Barry Ward, Supervising Psychologist at WSH, testified on behalf of WSH regarding the typical delays in admission for competency restoration treatment. Dr. Ward explained to the court that Mr. Hand had not yet been admitted to the hospital's competency restoration treatment unit because it was near full capacity. Dr. Ward explained that Mr. Hand was on a waitlist of 113 defendants, and reported that for 45-day restoration cases, the average wait time was 71 days. The delay in admitting individuals for treatment was "due to a significant increase in orders for inpatient evaluation or restoration and a decrease in the number of available beds" (*Hand*, p 504).

As a result of the hearing, the court held the Department of Social and Health Services (DSHS) in contempt and ordered Mr. Hand admitted to WSH no later than the following day and imposed sanctions including a \$500 fine for each day Mr. Hand remained in jail after this deadline. On March 4, 2015, Mr. Hand filed an additional motion to dismiss given he had not yet been admitted despite the new order, but the court denied the motion. Mr. Hand was admitted to WSH on March 10, 2015, for competency restoration treatment, and the court ordered DSHS to pay \$6,000 in sanctions. Prior to his admission, Mr. Hand was detained in jail for 76 days, 61 of which were after the expiration of the court's 15-day deadline.

After receiving competency restoration services at WSH, Mr. Hand was found competent to stand trial and was subsequently found guilty at a bench trial on April 29, 2015. Mr. Hand appealed his convictions to the court of appeals, which "held that the State violated Hand's substantive due process rights by detaining him in jail for 76 days before WSH admitted him for treatment" (*Hand*, p 504). Despite this, the court further "held that dismissal was not required . . . because Hand could not show that the delay prejudiced his right to a fair trial" (*Hand*, p 504). The Supreme Court of Washington granted Mr. Hand's request for review.

Ruling and Reasoning

The Washington Supreme Court addressed two main points in their review. First, the court addressed whether Mr. Hand's 76-day detainment in jail violated his substantive due process rights "because the nature and duration of his detention was not reasonably related to the restorative purpose for which the trial court admitted him" (*Hand*, p 505). The court considered both Mr. Hand's personal liberty interests and the interests of the state continuing to pursue prosecution. In doing so, the court indicated that, per the ruling in *Jackson v. Indiana*, 406 U.S. 715 (1972), "The relevant question is whether the nature and duration of Hand's detention is reasonably related to the purpose for which he was committed" (*Hand*, p 505).

The court cited previous cases which held that a defendant's Fourteenth Amendment rights establish requirements regarding the timeline for admission for competency restoration treatment. Relying on relevant case law outlined in *Oregon Advocacy Center v. Mink*, 322 F.3d 1101 (9th Cir. 2003), and *Trueblood v. Department of Social & Health Services*, 822 F.3d 1037 (9th Cir. 2016), the court indicated that a defendant's substantive due process rights are violated when treatment is not provided within seven days of being found incompetent. The court highlighted that "civilly committed persons must receive mental health treatment that gives them a realistic opportunity for restoration or improvement and that a lack of funds or facilities does not justify a hospital's failure to provide such treatment" (*Hand*, p 506). In *Trueblood*, the court specified that the U.S. Constitution requires the seven-day limit "because holding incompetent defendants in jail causes harm that directly conflicts with the goal of competency restoration" (*Hand*, p 297), in that time in jail can cause further deterioration of a defendant's mental health. Similarly, the court noted that Washington's legislature defined performance targets regarding the time in which an individual should be admitted for competency restoration as seven days (former Wash. Rev. Code § 10.77.068 (2012)). Given the holdings in these two cases, as well as the statutory language, the court affirmed that Mr. Hand's substantive due process rights were violated by his prolonged period of detainment. The court stated: "Because prolonged incarceration while awaiting treatment may cause serious harm to defendants and does not meaningfully advance the State's interest in restoring defendants'

competency to stand trial, the constitutional due process balancing favors Hand" (*Hand*, p 507).

The second point addressed by the court was whether dismissal with prejudice was warranted based on the facts of Mr. Hand's case. The court noted problems with the two statutory mechanisms currently available to defendants in Washington that permit pending charges to be dropped without prejudice when competency is raised. When a defendant's competency to stand trial has been called into question, prosecutors can elect for a competency evaluation or for dismissal of the pending charges without prejudice with an order for evaluation for civil commitment (Wash. Rev. Code § 10.77.079 (2015)). Additionally, the statutory language allows for charges to be dismissed without prejudice if a defendant has been found incompetent following competency restoration services and is unlikely to regain competency-related capacities. The court also discussed a third mechanism introduced in *State v. Kidder*, 389 P.3d 664 (Wash. Ct. App. 2016), which affirmed a trial court's use of Wash. Rev. Code § 10.77.084(1)(c)(2012) in dismissing "a defendant's charges without prejudice after WSH failed to admit the defendant for treatment within the 90-day competency restoration period specified in the court's order of commitment" (*Hand*, p 507).

Weighing the totality of the information presented, the court ruled that Mr. Hand's Fourteenth Amendment right to due process had been violated by the undue delay in admission. The court stated that there may be circumstances to dismiss such cases without prejudice where a defendant argues their right to a speedy trial has been violated, but Mr. Hand failed to argue this here. Dismissal with prejudice is not granted here because Mr. Hand did not show that the delay prejudiced his right to a fair trial.

Discussion

Although Mr. Hand asserted that the reasoning used in a case related to a defendant's right to a speedy trial could be applied to his case, the court indicated that arguments in this case failed to speak to the same concerns addressed in *State v. Striker*, 557 P.2d 847 (Wash. 1976), which lead to the dismissal of charges with prejudice. The court reasoned that, unlike the facts presented in *Striker*, "Hand does not argue before this court that his detention violated his right to a speedy trial. Nor does he argue that his prolonged detention was the result of

prosecutorial delay. Thus, *Striker* has no bearing on the resolution of this case” (*Hand*, p 508). The court disagreed that the current case was an example of a violation of the right to a speedy trial.

The court instead indicated that the delay in admitting Mr. Hand was due to WSH’s lack of resources, which resulted in the imposition of sanctions on WSH and did not warrant the dismissal of his charges with prejudice. The case underscores the importance of forensic examiners completing reports in a timely manner while ensuring evaluation services are accurate and reliable reflections of competency-related capacities. The court stressed the need for timely provision of mental health services when a defendant is displaying active symptoms of mental illness. The completion of timely evaluation and treatment services within the court’s timelines is essential, but failure to do so is unlikely to result in dismissal of charges with prejudice.

Reassessment of Competency

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Trial Court Did Not Abuse Its Discretion in Not Ordering Another Trial Competency Evaluation Where the Record Had No Evidence of Defendant Having Significant Changes in Mental Condition

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In *State v. McCarthy*, 446 P.3d 167 (Wash. 2019), the Supreme Court of Washington considered whether the trial court erred in not ordering a third trial competency hearing for a man previously found competent to stand trial by a jury. The court also addressed whether deference should be afforded a trial court when it does not *sua sponte* order a competency hearing. The court ruled that the trial court did not abuse its discretion when it did not order a

competency evaluation based on the evidence presented at the time.

Facts of the Case

Over a two-day period, Matthew McCarthy forced his way into a stranger’s house on three occasions. On one occasion, he was looking for his ex-wife, whom he mistakenly believed to be present in the residence. On the subsequent night, he again entered looking for his wife; he later entered to search for his cell phone. On the first occasion, he pushed the home’s occupant against a wall. The state charged Mr. McCarthy with burglary predicated on assault. The state informed Mr. McCarthy that he could face life in prison without parole because of his criminal history.

Mr. McCarthy’s public defender expressed concern for his competence to stand trial due, in part, to apparently delusional beliefs regarding his ex-wife and governmental misconduct. Although Mr. McCarthy objected to the competency hearing proceeding against his will, the trial court ordered a competency evaluation. The doctor who evaluated Mr. McCarthy, Dr. Daniel Lord-Flynn, submitted a diagnosis of bipolar disorder and substance use disorders but found that Mr. McCarthy demonstrated understanding of the legal proceedings and could assist in his own defense. Dr. Lord-Flynn tentatively opined that he was competent. But, after receiving additional information from the public defender that Mr. McCarthy was unable to effectively work with her, Dr. Lord-Flynn concluded that Mr. McCarthy was not competent due to his inability to assist in his own defense. The trial court ordered a 90-day period for restoration of competence. Mr. McCarthy maintained that he was competent and requested another opinion on the question. The second evaluator, Dr. Debra Brown, concluded that Mr. McCarthy was incompetent due to his inability to work with his counsel.

After an initial 90-day treatment period to restore competence, conflicting evidence as to Mr. McCarthy’s competence led the court to order a second 90-day treatment period. At the second period’s conclusion, Dr. Lord-Flynn again evaluated Mr. McCarthy, with Dr. Brown observing the assessment. There remained conflicting opinions as to whether Mr. McCarthy could assist counsel in his defense. The trial court ordered a jury trial to determine competence.