

the initial application. Consequently, the Court concluded that it had the statutory authority to adjudicate the claims of competence to be executed in the second application.

Second, the Court found that the state court had failed to provide the procedures to which Mr. Panetti was entitled under the Constitution (e.g., a fair hearing and an opportunity to submit psychiatric evidence that may differ from the state's psychiatric evidence). Third, the Court ruled that the Fifth Circuit employed an improperly restrictive test when it considered Mr. Panetti's claims on the merits. The Court noted that although the *Ford* opinions did not set forth a precise competency standard, the *Ford* Court did reach the expressed conclusion that the Constitution restricts the right of the state to execute an incompetent prisoner, because such execution serves no retributive purpose. The Court held:

We likewise find no support. . .for the proposition that a prisoner is automatically foreclosed from demonstrating incompetency once a court has found he can identify the stated reason for his execution. A prisoner's awareness of the State's rationale for an execution is not the same as a rational understanding of it. *Ford* does not foreclose inquiry into the latter [551 U.S. ___, 2007, p. 27, Bench Opinion].

Although the Court rejected the Fifth Circuit's competency standard, it did not attempt to set down a rule governing all competency determinations, because the record before the court was developed by the district court under the now-rejected Fifth Circuit standard. The court reversed and remanded the case back to the district court to develop an evidentiary record and resolve the petitioner's constitutional claim.

The Prisoner's Right to Treatment

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Requiring Prisoners Who Are Undergoing Interferon Treatment to Submit to Psychological Evaluation and Treatment Is a Reasonable Inclusion in a Hepatitis C Drug Treatment Protocol

In *Iseley v. Beard*, 200 Fed. Appx. 137 (3rd Cir. 2006), the plaintiff, a prisoner in the Pennsylvania Department of Corrections (DOC), brought suit related to numerous matters against employees of the Commonwealth of Pennsylvania and employees of the provider of medical services at the prison. A cen-

tral problem was the plaintiff's opposition to the DOC's requiring psychological evaluation and treatment as part of an interferon treatment protocol for hepatitis C virus (HCV). Mr. Iseley claimed that the defendants' failure to treat his HCV after he refused psychological treatment constituted cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments. The defendants filed a motion for summary judgment arguing that the DOC policy covering HCV did not constitute cruel and unusual punishment. The United States District Court for the Western District of Pennsylvania agreed and granted summary judgment to the defendants. On appeal, the United States Court of Appeals for the Third Circuit affirmed the district court's ruling.

Facts of the Case

In 1983, Charles Iseley was convicted of several robbery and assault charges and was incarcerated. He had numerous medical problems, including hepatitis C, chronic fatigue syndrome, fibromyalgia, and rheumatoid arthritis. He had brought several earlier suits against prison officials around the question of treatment for HCV and other conditions.

In October 2002, while incarcerated at State Correctional Institute at Greene (SCI-Greene), he again brought suit against DOC and SCI-Greene employees and the medical provider at SCI-Greene and its employees. He filed the case *pro se* as a civil rights action in the United States District Court for the Western District of Pennsylvania. (The medical provider at SCI-Greene and its employees were referred to as "the Medical Defendants," and the DOC and SCI-Greene employees were the "Commonwealth Defendants" in this case.) His complaint listed numerous claims: the failure of the prison authorities and doctors to treat his HCV and other conditions constituted cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments; the Medical Defendants' release of information regarding his HCV status violated his right to privacy; the denial of medical treatment was in violation of the Americans with Disabilities Act (ADA); the refusal to treat his HCV was retaliation for his failure to consent to psychological treatment and disclosure of his medical information; and the violation of various state laws.

The Medical Defendants filed a motion for summary judgment on the grounds that Mr. Iseley had

not exhausted his administrative remedies as required by statute. The Commonwealth Defendants also filed a motion for summary judgment arguing that the DOC policy regarding HCV treatment did not constitute cruel and unusual punishment and that none of them was personally involved in the other alleged actions. The district court granted both motions for summary judgment. The plaintiff appealed to the United States Court of Appeals for the Third Circuit.

Ruling and Reasoning

The United States Court of Appeals for the Third Circuit upheld the summary judgment for the Medical Defendants, finding that Mr. Iseley had failed to exhaust his administrative remedies as required of prisoners bringing an action under § 1983 or other federal laws.

Addressing the claims made against the Commonwealth Defendants, the appeals court first outlined the standards by which denying medical care would constitute an Eighth Amendment violation. First, the court noted, it must constitute “unnecessary and wanton infliction of pain” or “deliberate indifference to the serious medical needs” of a prisoner (*Estelle v. Gamble*, 429 U.S. 97 (1976)). In addition, to prove deliberate indifference, the plaintiff had to establish that he faced a “substantial risk of serious harm,” and that the defendants disregarded “that risk by failing to take reasonable measures to abate it” (*Farmer v. Brennan*, 511 U.S. 825 (1994)). Finally, mere negligence or inadvertence is insufficient to show an Eighth Amendment violation. (*Inmates of Allegany County Jail v. Pierce*, 612 F.2d 754 (3rd Cir. 1979)).

The appeals court turned to the central question of whether Mr. Iseley in fact was denied treatment. They pointed out that his claim that he was denied treatment for HCV was “by his own admission” not true. Instead, the court decided that the plaintiff had “refused interferon treatment because he would not consent to the release of his medical records and concomitant psychological treatment as required by DOC policy” (*Iseley*, 200 Fed. Appx., p 9).

Regarding Mr. Iseley’s objection that psychological treatment was unnecessary, the court cited the plaintiff’s own materials that listed depression and suicidal thoughts as potential side effects of interferon treatment. The appeals court concluded that “the DOC’s requirement that prisoners undergoing interferon treatment submit to psychological evalu-

ation and treatment is a reasonable inclusion in the HCV drug treatment protocol” (*Iseley*, p 10) and that the Commonwealth cannot be held responsible for Mr. Iseley’s unwillingness to comply with a legitimate treatment protocol.

Mr. Iseley argued that while the Commonwealth Defendants were not directly involved with denying him treatment for his other medical conditions, they acted with “deliberate indifference” because they were aware of these conditions and did not act to secure proper treatment for him. The court found this argument unconvincing, saying because the plaintiff was under the care of medical professionals, nonmedical personnel would be justified in believing that he was getting adequate care. Regarding Mr. Iseley’s argument that the denial of treatment for his ailments violated the Americans with Disabilities Act (ADA), the court found that there was no violation, writing that Mr. Iseley argued that he was denied medical treatment for his disabilities, which the ADA does not cover. They pointed out that the ADA covers only persons discriminated against based on their disabilities.

Discussion

This case brings up several concerns that are relevant to psychiatrists working in a correctional setting. The plaintiff, working *pro se*, brought suit claiming that he was denied medical treatment and that such denial constituted cruel and unusual punishment and deliberate indifference. The United States Court of Appeals for the Third Circuit, however, ruled that the prisoner chose to refuse medical care by refusing certain elements of the treatment protocol. Therefore, the plaintiff’s cruel and unusual punishment argument against the staff and the allegation that the employees acted with deliberate indifference were thought to be without merit.

The court pointed out that because interferon treatment increases the risk of depression and suicidality, requiring psychological interventions was a “reasonable inclusion” in the treatment protocol. The court’s ruling appears to give prison personnel considerable latitude by allowing them to request testing and other adjunct interventions that can be justified as integral to medical treatment.

In this case, psychological elements of the treatment protocol assume a level of importance similar to other medical testing. For example, laboratory testing of white blood cell counts is required when

patients are treated with clozapine because of the risk of agranulocytosis. Refusal to submit to such testing precludes treatment with clozapine.

In *Iseley v. Beard*, the court supported the view that refusal to submit to adjunctive psychological treatment and testing precludes interferon treatment for HCV.

Standards for Determination of Competence

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An Objective Unreasonableness Standard Should be Utilized in the Application of Governing Law for Determinations of Competence

In *Maynard v. Boone*, 468 F.3d 665 (10th Cir. 2006), the United States Court of Appeals for the Tenth Circuit considered the legal standards for determining competence to stand trial and to waive counsel. Applying an objective unreasonableness standard of review under the Antiterrorism and Effective Death Penalty Act (AEDPA), § 28 U.S.C. 2254 (2005), during a retrospective hearing, the court of appeals affirmed the finding of competence and the acceptance of the waiver of counsel made by the trial court.

Facts of the Case

On March 4, 1988, Larry D. Maynard shot James Cass. He was subsequently arrested and charged in Osage County, Oklahoma, with shooting with intent to kill. At the time of his arrest, Mr. Maynard had unrelated outstanding charges in Delaware County, for which he was found incompetent to stand trial, and he was committed to an Oklahoma state hospital. Proceedings in the Osage County criminal matter were stayed.

In March 1989, Mr. Maynard was found competent to stand trial by a Delaware County jury. The

District Attorney for Osage County then recommended that proceedings resume in his criminal matter pending there. However, Mr. Maynard requested a formal hearing for competency determination in that jurisdiction. He was found by a jury to be competent on September 4, 1990, and a trial date was set for March 19, 1991. Before the trial date, Mr. Maynard waived his right to counsel and moved to proceed *pro se*. At a hearing held one day before trial, the motion was granted. Following a four-day trial, Mr. Maynard was found guilty and sentenced to 99 years' imprisonment.

Mr. Maynard appealed the verdict, but due to procedural delays, the Oklahoma Court of Criminal Appeals (OCCA) did not issue an opinion on the matter until 1999, when it vacated the conviction on the grounds that the trial court had instructed the jury to apply an unconstitutionally high burden of proof to establish incompetence. The OCCA remanded the case to the trial court to determine whether a retrospective hearing of competence under a constitutional standard was feasible, given the passage of so many years. The trial court determined that a retrospective hearing was feasible, and in December 1999 a jury determined that Mr. Maynard had been competent to stand trial in 1991. On direct appeal in 2000, the OCCA affirmed the jury's determination, upholding Mr. Maynard's conviction and denying any other claims of error from the original trial. Mr. Maynard subsequently petitioned for a writ of *habeas corpus*, challenging his conviction on the grounds that he should not have been found competent to stand trial and that his waiver of counsel was invalid. The United States District Court for the Northern District of Oklahoma denied the petition on the merits. Mr. Maynard then appealed to the United States Court of Appeals for the Tenth Circuit.

Ruling and Reasoning

Under the AEDPA, the legal standard for reviewing a state court's decision that resolves an appeal on the merits is whether the decision is contrary to or involves an unreasonable application of clearly established federal law, as determined by the U.S. Supreme Court. In review of factual matters, a writ can be granted only in cases in which a state decision has been based on an "unreasonable determination of the facts in light of evidence presented" (*Williams v. Taylor*, 529 U.S. 362, 404 (2000)). The appeals court noted that to be found unreasonable, a decision must