

tain jurisdiction. By doing so, the intent of the legislature was interpreted as not to limit the state's ability to impose restrictions on those found to be not criminally responsible. The intent was to avoid jeopardizing the community by the premature release of a patient from a therapeutic environment that may be essential for his recovery and the public safety.

One may argue that the court's having what appears to be continuous and interminable jurisdiction poses a sense of uncertainty for some. It may raise the feeling of absolute control over a person who has been found not criminally responsible and therefore may be burdensome. However, the state has highlighted that there are methods of arguing and challenging those grounds on the basis of a writ of *mandamus* or to seek proactive discharge or termination of the conditions.

One may also question the definition of "reasonable time." The court held that there is no due process violation so long as the decision is given in "reasonable time." Given the extent of some of the conditions of release (for example, Mr. Harrison-Solomon's conditions of needing approval for employment, change of residence, and marriage) one can appreciate his dismay. During the period that the extended OCR was in effect, if the individual had been without conditions, he could have gotten married or become a parent. The continued monitoring and supervision of those released from more restrictive to less restrictive environments is of interest to all parties involved, bringing to light concerns of patients' well-being, autonomy, and constitutional rights, as well as public safety.

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Court Overturns Death Sentence for Failure to Introduce Defendant's Mental Health History for Mitigation Purposes

Subhash Chandra, MD
Fellow in Forensic Psychiatry

Clarence Watson, JD, MD
Director, Forensic Psychiatry Fellowship
Clinical Associate Professor of Psychiatry

Department of Psychiatry
Perelman School of Medicine
University of Pennsylvania
Philadelphia, PA

Defense Counsel Failed to Investigate and Introduce Evidence of the Defendant's Mental Health History During the Penalty Phase

In *Saranchak v. Secretary, Pennsylvania Dept. of Corrections*, 802 F.3d 579 (3d Cir. 2015), the Third Circuit Court of Appeals overturned a death sentence on appeal from the district court's action on a petition for writ of *habeas corpus* claiming ineffective assistance of counsel during the guilt and penalty phases of trial. Although the circuit court found no grounds for ineffective assistance of counsel during the trial's guilt phase, they found that trial counsel's failure to investigate and introduce mitigating factors, including a dysfunctional childhood history and mental health history, amounted to ineffective assistance of counsel during the penalty phase. Accordingly, the defendant's conviction was upheld, but his death sentence was overturned.

Facts of the Case

On October 15, 1993, Daniel Saranchak was intoxicated when he and a friend traveled to Saranchak's grandmother's home, where Mr. Saranchak killed his uncle and grandmother. During police interrogation, Mr. Saranchak assumed a militaristic posture and behaved as if interacting with drill sergeants. He reported being present at his grandmother's home on a military mission and claimed that information about his grandmother's death was classified. He admitted to shooting his uncle. While incarcerated pending trial, Mr. Saranchak met with a child services caseworker regarding his minor children, and he provided incriminating details regarding both killings.

Mr. Saranchak's attorney requested a court-appointed psychiatrist to evaluate his competency to stand trial and mental capacity to form the specific intent to kill at the time of the crime. The trial court granted the motion regarding the competency examination, but did not order the examination for diminished capacity. Mr. Saranchak was found competent to stand trial, and his defense attorney later testified that he did not seek the diminished-capacity evaluation, because nothing in the competency report indicated that further examination would be helpful.

Mr. Saranchak entered a guilty plea to murder generally, but contested the degree of guilt at a non-jury trial. He presented a diminished-capacity defense, but his attorney did not present expert testimony. Instead, he presented testimony from family and friends regarding Mr. Saranchak's excessive consumption of alcohol on the night of the murders to support the diminished-capacity claim. Mr. Saranchak was found guilty of two counts of first-degree murder. During the penalty phase, a jury returned the death sentence.

On appeal, Mr. Saranchak challenged his conviction on the grounds of ineffective assistance of counsel related to the presentation of the diminished-capacity defense and mitigation evidence. The Pennsylvania Supreme Court affirmed his conviction and sentence. Mr. Saranchak then sought state postconviction relief pursuant to the Pennsylvania Postconviction Relief Act (PCRA), by asserting that his attorney was ineffective. He was denied relief.

Mr. Saranchak then petitioned for *habeas corpus* in district court by arguing ineffectiveness of counsel. The district court granted relief on the grounds that his counsel had failed to investigate and present evidence supporting a diminished-capacity defense and had neglected to argue suppression concerns related to Mr. Saranchak's confessions. The district court did not resolve the question of ineffectiveness of counsel during the penalty phase. The Commonwealth appealed, and the Third Circuit Court reversed and remanded the case. On remand, the district court again denied relief.

On second appeal to the Third Circuit Court, Mr. Saranchak renewed his argument of ineffectiveness of counsel during the guilt phase for failure to present mental health evidence to suppress his confession and to support his diminished-capacity claim. He also argued ineffectiveness of counsel during the penalty phase based on his attorney's failure to introduce mental health evidence and dysfunctional family dynamics as mitigating circumstances. Mr. Saranchak's attorney testified that he did not investigate such evidence because the defendant and his family did not disclose Mr. Saranchak's mental health history.

Ruling and Reasoning

The Third Circuit Court ruled that Mr. Saranchak's defense was not prejudiced during the guilt phase by his attorney's failure to present his mental health history for his diminished-capacity claim or to

suppress his confession to police. The court reasoned that other evidence, including his incriminating statements to a caseworker and his accomplice's testimony, established such compelling evidence of his intent and motive at the time of the crime that it would have outweighed any expert mental health testimony. Accordingly, the first-degree murder convictions were upheld.

However, the Third Circuit Court agreed that Mr. Saranchak was harmed by his attorney's failure to investigate and present evidence of his mental health history as a mitigating factor during the penalty phase. The court explained the twofold test for establishing ineffective assistance of counsel: that counsel's performance fell below an objective standard of reasonableness based on prevailing professional norms in the factual context of a particular case and that counsel's conduct prejudiced the defense. The court found that during the penalty phase, Mr. Saranchak's attorney unreasonably erred by not further investigating Mr. Saranchak's mental health history.

The circuit court rejected counsel's argument, and the Pennsylvania Supreme Court's earlier finding that counsel did not pursue evidence of Mr. Saranchak's psychiatric history because counsel was not privy to that information. Defense counsel asserted that Mr. Saranchak and his family did not inform him of Mr. Saranchak's problematic psychological history. However, the circuit court found that other sources beyond Mr. Saranchak and his family, including the competency evaluation that noted a prior psychiatric hospitalization and suicide attempt and Mr. Saranchak's abnormal behavior during his confession to police, indicated further need for investigation. The court found that counsel's reliance on a limited court-appointed competency-to-stand-trial evaluation and counsel's failure to obtain Mr. Saranchak's psychiatric hospitalization records fell below objective standards of reasonableness.

The circuit court also found that counsel's failure to investigate and present Mr. Saranchak's mental health history during the penalty phase prejudiced Mr. Saranchak's defense. Under Pennsylvania law, a sentence of death is mandatory if a jury unanimously finds at least one aggravating circumstance and no mitigating circumstances or unanimously finds that one or more aggravating circumstances outweigh the mitigating circumstances. The court noted that if one juror found that the aggravating circumstances

did not outweigh any mitigating circumstances, then Mr. Saranchak would have been sentenced to life imprisonment. The circuit court found that the earlier PCRA court had misapplied the law by opining that Mr. Saranchak's mental health history would not have swayed even one juror under the case's facts and Mr. Saranchak therefore was not prejudiced. The circuit court pointed out that Mr. Saranchak was not required to establish prejudice by showing that one juror would have been swayed, but instead, that he only had to show a reasonable probability that the outcome would have been different absent counsel's errors. The court found that the presentation of Mr. Saranchak's mental health history to the jury could have been a vital mitigating factor that would have supported a sentence of life imprisonment. Accordingly, the Third Circuit Court overturned the death sentence.

Discussion

The *Saranchak* court weighed the importance of mental health evidence in the guilt and penalty phases of trial. Failure to present a defendant's history of mental problems alone during either trial phase will not automatically render a conviction or sentence defective, since courts will weigh the probable impact of such evidence against the factual circumstances of a particular case. A defendant exhibiting signs indicating mental health problems, as in this case, should have prompted a full psychiatric evaluation, especially in the setting of a capital case. Such an evaluation may not provide a viable defense or grounds to suppress a confession at the guilt phase, but it is difficult to argue that the evaluation would not be beneficial to a capital defendant during the penalty phase. Further, sole reliance on an evaluation limited to the question of competence to stand trial to determine the need for further evaluation is problematic, even if a defendant is not forthcoming about his personal history.

There may be numerous reasons why a defendant or his family would not disclose the defendant's mental health history or dysfunctional family dynamics, including stigma or shame. However, that lack of disclosure does not absolve counsel from the responsibility of investigating a defendant's mental health when other sources point to such a history. Mitigation offers the defense an opportunity to humanize a capital defendant, countering the prosecution's charge to present aggravating factors to secure a death

sentence. Failure to attempt to humanize a capital defendant through mitigating evidence pointing to his personal circumstances, including problematic psychological and developmental histories, precludes a jury from weighing the entire picture as the law intended during the penalty phase.

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Expert Witness Testimony in Civil Commitment Hearings for Sexually Dangerous Individuals

Jennifer E. Alleyne, 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, SC

Marie E. Gehle, PsyD
Chief Psychologist

South Carolina Department of Mental Health
Columbia, SC

The North Dakota Supreme Court Considers the Admission of Contested Expert Testimony during Commitment Proceedings

In *In re Loy*, 862 N.W.2d 500 (N.D. 2015), Garrett Alan Loy appealed his civil commitment as a sexually dangerous individual directly to the North Dakota Supreme Court, in part, on the basis of his assertion that the court erred in admitting the testimony of two expert witnesses and that the state did not prove by clear and convincing evidence that he was a sexually dangerous individual.

Facts of the Case

In 2005, Mr. Loy pleaded guilty to a charge of gross sexual imposition, resulting in the revocation of his probation from a prior 2004 conviction for a similar charge. He was ordered to serve two consecutive terms of 10 years of incarceration suspended to 5 years and to complete an intensive sex offender treatment program while incarcerated, which he did in 2012. Before his release, Mr. Loy was evaluated under the sexually dangerous individual statute, and