cated during the commission of the homicides. Finally, the court opined that counsel had an ethics-based obligation to comply with an informed defendant's refusal to present an affirmative defense.

Discussion

Defendants who are mentally ill, but competent to stand trial, sometimes do not allow their defense attorneys to present any mental health evidence in court, even if this appears prudent and could substantially reduce the resulting sentence. In such cases, the question arises what obligations defense attorneys and other actors involved in the legal proceedings have if a defendant with mental illness appears to act against his own self-interest. In extreme cases, some states allow the defense attorney, judge, or prosecutor, or combination thereof, to impose an insanity defense on a defendant against his expressed will, in some states even if the defendant has been found competent to stand trial (Miller RD: *Hendricks v. People:* forcing the insanity defense on an unwilling defendant. *J Am Acad Psychiatry Law* 30: 295–7, 2002).

Aside from the question of what mechanisms are used to force unwilling but competent-to-stand-trial defendants to pursue a defense strategy based on a mental health claim, one may ask whether such mechanisms should exist at all. If a defendant is deemed competent to stand trial, what does this competency really mean if the defendant is then not free to determine the defense strategy that he wishes to pursue? Miller (p 297) argued that this seeming contradiction mainly stems from the artificial separation, applied by most courts, between competency to proceed and competency to enter a plea. He further argued that the latter should be subsumed under the former, and that in such a system, a competent defendant should not have an insanity defense imposed on him. It appears to follow directly from Miller's argument that this should also hold true in cases where the action that is to be compelled is not an insanity defense, *per se*, but involves the presentation of mental health evidence to reduce a sentence or charges (for example, from murder to manslaughter, as in *Breton*). Such an understanding of competency would naturally entail defendants' choosing the defense strategy and presumably resolving the question as to the obligations of defense attorneys. If the capacity to decide on a trial strategy is seen as an integral part of the ability of defendants to aid in their defense, psychiatrists would not recommend a finding of competence to stand trial if that ability were lacking.

Whereas psychiatrists could identify cases where this ability is grossly lacking, there would presumably be many cases where it would be difficult to discriminate between a defendant making a competent but unwise decision, and a defendant making an incompetent decision. Psychiatrists who lack formal legal training are not necessarily in the best position to judge which legal strategy is best in which specific context. This lack of training would make it very difficult indeed for psychiatrists to be the arbiters of such legally nuanced questions.

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The Limits of Solitary Confinement on Death Row

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Holding Inmates in Solitary Confinement Is Unconstitutional After Death Sentences Have Been Vacated

In *Williams v. Sec'y Pa. Dep't of Corrections*, 848 F.3d 549 (3d Cir. 2017), the U.S. Court of Appeals for the Third Circuit considered Pennsylvania's practice of housing inmates in solitary confinement on death row after they have been granted resentencing hearings. The court held that this practice violates the inmates' Fourteenth Amendment rights because the extreme deprivations of death row are no longer justified once the death sentences have been vacated. In arriving at its decision, the court relied heavily upon scientific literature delineating the psychological harms of solitary confinement.

Facts of the Case

In 1988, Craig Williams was convicted of first-degree murder and sentenced to death in the Philadelphia Court of Common Pleas. Upon entry into the Pennsylvania Department of Corrections

(DOC), he was placed in solitary confinement on death row, as was required by policy. Over the next 18 years, he appealed his criminal conviction, and in 2006, he was granted a new sentencing hearing. Nonetheless, he continued to be held in solitary confinement on death row for another six years, because DOC policy required that, once persons are placed on death row, "the secretary [of corrections] shall, until infliction of the death penalty or until lawful discharge of custody, keep the inmate in solitary confinement" (61 Pa. Cons. Stat. § 4303 (2009)). In 2012, Mr. Williams was resentenced to life in prison without the possibility of parole, and he was released from solitary confinement.

Similarly, in 1992, Shawn Walker was convicted of first-degree murder, sentenced to death, and placed in solitary confinement on death row in the Pennsylvania DOC. After several appeals, his death sentence was vacated in 2004. He continued to be housed in solitary confinement on death row until 2012, when he was resentenced to life without parole and released to the general population.

While on death row, Messrs. Williams and Walker were subjected to significant restrictions. For example, Mr. Williams was confined to a windowless cell for close to 22 hours a day and consumed all of his meals in isolation. He was permitted only noncontact visits. When he left his cell for showers or to visit the prison yard, his movements were restricted to a small locked cage. All medical consultations were conducted at his cell door, compromising the privacy of his medical information. Mr. Walker faced similar conditions on death row, including confinement in a small windowless cell and restriction to only four noncontact visits per month. Mr. Walker was allowed two hours of solitary out-of-cell exercise five times a week, which he chose to forgo because of the requirement that he be strip searched before returning to his cell. Consequently, he did not leave his cell to exercise for seven years.

Messrs. Williams and Walker separately filed suit against the Pennsylvania DOC under 42 U.S.C. § 1983 (2012), alleging that their continued placement in solitary confinement after they had been granted resentencing hearings violated their Eighth and Fourteenth Amendment rights. They argued that the conditions of long-term solitary confinement had caused severe physical and psychological harm, including emotional distress, insomnia, and body tremors. In both cases, the defendants moved for summary judgment, arguing that they had followed departmental policy and were therefore entitled to qualified immunity for their actions. In both cases, the district court granted the defendants' motion for summary judgment. Messrs. Walker and Williams appealed the rulings. Mr. Walker's appeal was consolidated with Mr. Williams', and the cases were heard together by the Third Circuit Court of Appeals.

Ruling and Reasoning

The U.S. Court of Appeals for the Third Circuit first considered whether Messrs. Williams and Walker had a constitutionally protected liberty interest in remaining out of solitary confinement after their death sentences were vacated. The court determined that only an "*atypical and significant hardship* . . . in relation to the ordinary incidents of prison life" (*Williams*, p 559, italics in original) could create a protected liberty interest. The court looked to two U.S. Supreme Court decisions, *Sandin v. Connor*, 515 U.S. 472 (1995) and *Wilkinson v. Austin*, 545 U.S. 209 (2005), to determine whether the conditions of solitary confinement on Pennsylvania's death row constituted an atypical and significant hardship. After reviewing these precedents, the court concluded that Messrs. Williams' and Walker's indefinite, long-term isolation was much more severe than ordinary prison life, and therefore they did have a protected liberty interest in avoiding such conditions. In addition to *Sandin* and *Wilkinson*, the court relied heavily upon its review of scientific literature documenting the psychological harms of long-term solitary confinement, finding that the conditions could cause depression, anxiety, self-injury, and other serious symptoms.

Although the court concluded that Messrs. Williams and Walker were placed at risk of serious harm while in solitary confinement, it ultimately affirmed the district court's judgment in favor of the defendants. The court concluded that, at the time in question, Pennsylvania did not have clear policies or procedures about where death row inmates should be housed after they had been granted a resentencing hearing. Therefore, DOC officials could not be held accountable for keeping Messrs. Williams and Walker on death row during this time, since this placement was consistent with one interpretation of an ambiguous policy.

However, the court also held that, going forward, the Pennsylvania DOC could not keep death row inmates in solitary confinement after they had been granted resentencing hearings without "meaningful review" of the placement. The court reasoned that the potential for psychological harm was too great for inmates to be left in solitary confinement indefinitely while awaiting resentencing, citing recent decisions from the Second, Fourth, Fifth, and Sixth Circuit Courts of Appeals that arrived at similar conclusions. The court concluded that inmates whose death sentences have been vacated are entitled to the same procedural protections as other inmates subject to solitary confinement, including a statement of the reasons for the placement, a hearing regarding the placement, and periodic review of the placement based on risk.

Discussion

Williams is one of many recent decisions that restrict the use of solitary confinement in prisons based, in part, on research studies and professional guidelines about its potentially damaging psychological effects. The field is moving quickly, with the American Psychiatric Association (APA), National Commission on Correctional Health Care (NCCHC), American Public Health Association, and other organizations releasing guidelines or position statements on aspects of solitary confinement in the past five years. Each position statement seems to go further than the one before it. For example, in 2012, the APA recommended limiting the use of prolonged (longer than 30 days) solitary confinement for adult inmates with serious mental illness (American Psychiatric Association: Position statement on Segregation of Prisoners with Mental Illness, Washington, DC, December 2012). In 2016, the NCCHC recommended that no inmates (with or with mental illness) should be kept in solitary confinement for longer than 15 days, calling such conditions "cruel, inhumane, [and] degrading treatment" (Position Statement: Solitary Confinement (Isolation). *J Correction Health Care* 22: 257–63, 2016, p 260).

Some mental health professionals have argued that even these positions do not go far enough. In 2015, the *Journal* published an editorial calling on the APA to strengthen its advocacy around abolishing solitary confinement (Appelbaum K: American psychiatry should join the call to abolish solitary confinement. *J Am Acad Psychiatry Law* 43:406–15, 2015), particularly in light of the courts' tendency to rely upon the opinions of mental health professionals in this area. Others have stressed the need for more high-quality research on solitary confinement, as the literature is somewhat outdated and lacks rigorous methodology (Kapoor R, Trestman RL: Mental health effects of restrictive housing, in *Restrictive Housing in the U.S.: Issues, Challenges, and Future Directions.* Washington DC: National Institute of Justice, 2016, pp 199–232). Even with the limited data available, mental health professionals and courts seem to have formed a consensus that solitary confinement is deeply problematic, and correctional systems must find better ways to manage prisoners.

Williams restricts the use of solitary confinement for a relatively small group of prisoners, those whose death sentences have been vacated, so perhaps its impact on prison management will be fairly limited. However, the case raises an important question about the permissibility of solitary confinement for death row prisoners whose sentences have not been vacated and who are awaiting execution. If, as *Williams* concludes, long-term solitary confinement causes substantial psychological harm, then why is it not important to protect all death row inmates from these conditions, regardless of the status of their criminal appeals? The case does not address this question, but given the recent movement of courts in a progressive direction, one can anticipate such a challenge to solitary confinement on death row in the coming years.

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Is "Some" Enough in Special Education?

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Special-Needs Children Are Entitled to More Than *De Minimis* Education in Public Schools

In *Endrew F. v. Douglas County School District RE-1*, 137 S. Ct. 988 (2017), the U.S. Supreme