

mental health professionals, should have known about the need for discharge planning. In addition, the court cited written policies by both ICE and Orange County which suggest that the jail should have known the plaintiffs needed discharge planning. For these reasons, the Second Circuit Court vacated the district court's opinion and remanded for proceedings consistent with the opinion. The Second Circuit ruled, therefore, that if proven true by the finder of fact, the allegations are sufficient to establish deliberate indifference to the plaintiffs' medical needs.

Discussion

This case highlights the special relationship established between the state and detainee when liberty is limited by civil detention. The right to medical care for prisoners found guilty by a court is protected under the Eighth Amendment. These protections were extended to certain persons without a formal adjudication of guilt, such as civil detainees, through the Fourteenth Amendment. The question at the core of this case is whether discharge planning is part of in-custody medical care for psychiatric patients. The Ninth Circuit's decision in *Wakefield v. Thompson*, 177 F.3d 1160 (9th Cir. 1999) held that prisoners must be given a sufficient supply of medication upon release so they can consult a doctor for refills. Several questions remain unanswered. What other aspects of discharge planning are required? How long must one be detained to require discharge planning? What aspects of discharge planning should be prepared at the time of detention to mitigate the risk of unforeseeable release?

These questions are shaped by the unique circumstances raised by immigration detention, particularly at a time when immigration detention is under scrutiny. The number of detainees, the trauma many have suffered before and during detention, unpredictable releases and deportations, and undiagnosed psychiatric conditions are only some of the circumstances confronting the delivery of standard clinical practice. These challenges are reminiscent of those in the criminal courts that gave rise to criminal justice and mental health partnerships, diversionary programs, and incorporation of mental health services within the courts. Forensic psychiatrists are well-positioned to address these concerns in individual cases and in guiding policy and program development. As societal circumstances create new challenges in the courts and in forensic practice, we

should remain cognizant of the unique needs of persons struggling with mental disorders.

Mental Health Treatment on Supervised Release

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Courts Must Provide Substantial Justification When Ordering Mental Health Treatment as a Condition of Supervised Release

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In *United States v. Bree*, 927 F.3d 856 (5th Cir. 2019), the Fifth Circuit Court of Appeals modified a district court's sentence by striking down the mental health special condition of probation. This decision was made after the Fifth Circuit deemed that the mental health condition was unsupported by the plaintiff's history. The court gave substantial consideration to the question of relevancy of previous substance use and mental health records in the determination of special requirements of probation following release from incarceration.

Facts of the Case

In October 2017, Kelvin Lewis Bree was stopped at the Sarita checkpoint on the United States–Mexico border by a Border Patrol agent. After the agent's canine detected several bundles of cocaine and marijuana hidden in Mr. Bree's possession, he was charged with two counts of drug possession with the intent to distribute. While one charge was later waived, Mr. Bree pleaded guilty to the other count and was sentenced by the district court to 70 months of incarceration and four years of supervised release. As part of his supervised release, the district court imposed two special conditions: Mr. Bree would be required to complete substance abuse treatment and undergo mental health treatment while under the supervision of a probation officer "because of Bree's substance problems" (*Bree*, p 858). The mental

health condition also required Mr. Bree to take any prescribed medications while on probation, as well as to pay for these services. Mr. Bree challenged only the mental health condition of his sentence, resulting in a review for plain error by the appeals court.

According to Mr. Bree's presentence report, in addition to his criminal history, he had a single suicide attempt at the age of 18 or 19. When asked about the suicide attempt at the time of his presentence interview, Mr. Bree conceded that he probably was trying to hurt himself but also described himself as "young and being stupid" at the time (*Bree*, p 859). The presentence report also documented a history of marijuana, alcohol, and cocaine use beginning at the age of 14. This record indicated that Mr. Bree's most recent use of substances was more than 30 years earlier, at which time he participated in a substance abuse program. Nonetheless, the presentence report recommended both mental health and substance abuse treatment for Mr. Bree.

Ruling and Reasoning

The Fifth Circuit Court of Appeals considered whether the district court committed a plain error that affected the defendant's substantial rights by imposing the mental health treatment condition. Additionally, the court considered whether letting a plain error remain unchanged would "seriously affect the fairness, integrity, or public reputation of judicial proceedings" (*Bree*, p 859, citing *Puckett v. U.S.*, 556 U.S. 129 (2009), p 135). In this case, the court found that the district court had erred and that the error affected the fairness of the defendant's legal proceeding.

In its reasoning, the district court had stated that Mr. Bree's substance use problems justified the mental health treatment condition and later suggested that Mr. Bree's recent history of unemployment may have caused him to fall into a depression requiring mental health treatment. The Fifth Circuit found this reasoning unsatisfactory given the lack of mental health records and the presence of Mr. Bree's second special condition of substance abuse treatment. Specifically, the court pointed to its recent decision in *United States v. Caravayo*, 809 F.3d 269 (5th Cir. 2015), in which it clarified that the reasons for special conditions must be based on factual findings evident from the record and tailored to the individual on whom the conditions are imposed. With regard to Mr. Bree's possible depression given his job loss, the court reiterated that it requires recorded facts regarding mental instability and that

"unadorned speculation isn't enough" (*Bree*, p 861). Even after an independent review of the record, the court found that Mr. Bree's history of one suicide attempt early in life was not enough to justify imposing special conditions of mental health treatment.

The court then considered whether the plain error committed by the district court affected Mr. Bree's substantial rights. Specifically, the court investigated whether the requirement that Mr. Bree pay for the cost of mental health treatment encroached on his rights. The government argued that, because Mr. Bree was a "man of meager means" (*Bree*, p 861), it would be unlikely that he would end up paying the costs. The court found this argument inadequate, stating that "whatever money Bree has, it is his" (*Bree*, p 861).

Discussion

This case highlights possible limitations on sentencing courts when imposing special conditions of release from incarceration. Sentencing courts generally reserve broad discretion to impose special conditions, although this is limited by federal law, which declares that special conditions must be "reasonably related" (18 U.S.C. 3583(d)(1) (2017)) to one of four factors outlined in 18 U.S.C. § 3553(a) (2017), "involve no greater deprivation of liberty than is reasonably necessary" (18 U.S.C. 3583(d)(2) (2017)), and remain "consistent with any policy statements issued by the Sentencing Commission" (18 U.S.C. 3583(d)(3) (2017)). In the current case, the Fifth Circuit Court of Appeals found that an early adulthood suicide attempt and a history of substance use did not justify a mental health treatment requirement following incarceration.

Of particular interest to forensic psychiatry and psychology, the court's reasoning highlights a clear distinction between substance use treatment and mental health treatment. Despite the presentence report's characterization of Mr. Bree's mental and emotional problems as emanating from drug or alcohol use, the appeals court reasoned that, given Mr. Bree's history, treatment beyond that focusing on substance use was not warranted. This distinction between substance use and mental health is not unfamiliar to the court system, and although they are generally separated in both presentence reports and psychiatric reports, within the field of psychiatry there is increasing emphasis on using a dual-diagnosis approach to treatment. As the fields of psychiatry and psychology continue to move toward a model in which substance use and mental health are addressed concurrently, it may be of interest to the legal system to

consider an increasingly integrated approach to assessment and treatment.

This case also highlights the court's focus on considering the individual's circumstances when ruling which conditions of release are most appropriate. As the court noted in its opinion, it cannot impose a condition which places a burden on the defendant without sufficient justification. This consideration may suggest a more thoughtful approach to sentencing that would reduce the burden on defendants who do not require extensive mental health treatment. As experts in mental health, it is imperative that psychiatrists and psychologists remain engaged in these decisions and continue to advocate for their patients to receive necessary and effective treatment.

Persons with Chronic Mental Illness Navigating the Legal System *Pro Se*

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The Sixth Amendment Right to Represent Oneself at Trial Must Be Invoked Unambiguously and Continuously

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In *State v. Meyers*, 434 P.3d 224 (Idaho 2019), the Idaho Supreme Court affirmed the District Court of the Fourth Judicial District's ruling that the denial of Richard Meyers' request for self-representation did not violate his Sixth Amendment rights. The court reasoned that Mr. Meyers' letter to the court seeking to represent himself in the case was contradicted by his subsequent behavior that indicated abandonment of that intent. Although Mr. Meyers' competency to stand trial had been addressed earlier, he did not present a formal motion to proceed *pro se* in an ap-

propriate manner, hence his competency to represent himself was not considered at trial.

Facts of the Case

Mr. Meyers, who had a recent and remote history of incarceration, was charged with grand theft auto for stealing a pickup van. Shortly after the start of trial proceedings, he filed for a change of attorney but later changed his mind to give his attorney "a chance." He also waived his right to a jury trial. Mr. Meyers' competency to stand trial was raised as a concern at trial by his attorney; after a psychiatric evaluation, Mr. Meyers was ordered by the court to undergo competency restoration.

Following restoration to competency, Mr. Meyers became frustrated with the pace of the court proceedings, especially after his attorney asked for an extension of his hearing date to accommodate the attorney's lack of availability. In a letter addressed to the judge, Mr. Meyers expressed dissatisfaction with his attorney and concern that postponing the hearing date would interfere with funding for his transitional housing. He wrote that he had fired his attorney and was "prepared to represent himself . . . as soon as is possible" (*Meyers*, p 226), stating, "I choose to exercise the right to represent myself in this matter" (*Meyers*, p 226). Although his letter was filed by the court clerk, it was unclear whether the judge or anyone else saw it. The start date for the hearing was not changed.

At the beginning of the trial, Mr. Meyers arrived with new counsel, cooperated with counsel, and made appropriate requests of the court through his counsel. He did not raise the question of self-representation throughout the trial, even when the judge specifically asked if there were matters to be addressed. After the court found him guilty, however, Mr. Meyers appealed, stating that his Sixth Amendment right to self-representation had been violated. The Idaho Court of Appeals affirmed the ruling of the trial court and held that, while Mr. Meyers clearly and unequivocally invoked his right to self-representation, his subsequent behavior indicated that he had abandoned that invocation. Mr. Meyers then petitioned the Idaho Supreme Court for review.

Ruling and Reasoning

The Idaho Supreme Court accepted the case for review because it involved a constitutional question of first impression, the right to self-representation. The court utilized a totality of circumstances stan-