

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*

Ayala Danzig, MD, MSW
Resident in General Psychiatry

Charles Dike, FRCPsych, MBChB, MPH
Associate Professor of Psychiatry
Associate Program Director, Law and Psychiatry
Forensic Fellowship Program
Medical Director, Commissioner’s Office, Connecticut
Department of Mental Health and Addiction Services

Law and Psychiatry Division
Department of Psychiatry
Yale University School of Medicine
New Haven, Connecticut

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-

dard when it affirmed the conviction, holding that, although Mr. Meyers did invoke his right to self-representation, his subsequent behavior suggested he had abandoned that request. The totality of the circumstances test is used by courts in Arizona to determine whether an individual has abandoned his motion for self-representation when a court “fails to consider and rule on the motion” (*State v. McLemore*, 288 P.3d 775 (Ariz. Ct. App. 2012), p 786). Factors to consider under this test include:

the defendant’s opportunities to remind the court of a pending motion, defense counsel’s awareness of the motion, any affirmative conduct by the defendant that would run counter to a desire for self-representation, whether the defendant waited until after a conviction to complain about the court’s failure to rule on his or her motion (thus indicating the defendant was gaming the system), and the defendant’s experience in the criminal justice system and with waiving counsel (*McLemore*, p 786).

This standard allows for consideration of all facts and the context of the case, which in this case included statements made in Mr. Meyers’ letter to the court as well as his behavior in court.

As established in *State v. Lippert*, 181 P.3d 512 (Idaho Ct. App. 2007), to invoke one’s Sixth Amendment Right to self-representation at trial, one must do so clearly and unequivocally. Further outlined in *Brown v. Wainright*, 665 F.2d 607 (5th Cir. 1982) is the standard that all subsequent conduct must indicate a continuing intention to proceed *pro se*. The court made its determination considering all of Mr. Meyers’ actions at trial against these requirements. In support of the notion that Mr. Meyers had unambiguously invoked his right to proceed *pro se*, the court cited multiple statements that Mr. Meyers had made in his letter to the court: the fact that he had fired his counsel, that he was “prepared to defend himself in this manner” (*Meyers*, p 227), his assertion that he would present his defense at the earliest opportunity, and the conclusion of his letter with a formal invocation of his right to proceed *pro se*. The court also noted that Mr. Meyers’ later behavior indicated that he had revoked that initial invocation: his appearance in court with new counsel, his acquiescence to representation by permitting counsel to act on his behalf throughout the trial, and his failure to reassert his request for self-representation prior to the rendering of a guilty verdict, despite clear opportunities to do so. Thus, the court concluded that the totality of the circumstances established that, although Mr. Meyers had clearly invoked his right of

self-representation in his letter to the court, he later abandoned this request and waived this right by his subsequent conduct.

Discussion

This case highlights the challenges that individuals with mental impairments encounter when trying to navigate the legal system unassisted. For example, Mr. Meyers’ concern that extending the date of his hearing beyond a certain date could cause him to become homeless did not impress the court, even though this concern appeared to weigh heavily in his decision to represent himself and to present his case as early as possible. On the other hand, the court was responsive to his attorney’s request to extend the date for the attorney’s own reasons. The consequences of housing loss to an individual with chronic psychiatric illness can be profound and can exponentially increase the risk of psychiatric decompensation and of criminal justice involvement. Financial, housing, and vocational concerns are familiar to mental health providers because they frequently influence patient participation in recommended treatment. Individuals with serious mental illness can encounter difficulties having their needs met in a complex system, and treating psychiatrists are often unclear how to advocate for their patients involved in legal proceedings. Coaching a patient on how to interact with the court, whom to contact for specific needs or questions, and how to solicit a response to a request could improve the patient’s odds of a desired outcome. Mr. Meyers attempted to communicate with the judge through a letter, which not only created the potential for the communication to be lost but also for it to be viewed as an attempt at *ex parte* communication with the judge, and thus improper. With assistance, perhaps Mr. Meyers would have been encouraged to utilize another, more effective, way to communicate his needs.

Although the question of self-representation did not come up during trial, it would have been interesting to see how the court would have addressed it, given that Mr. Meyers had been found incompetent to stand trial at the outset and subsequently restored to competency. Had it been raised, would the court have automatically requested an evaluation for competency to proceed *pro se*, or would it have assumed that his restoration to competency to stand trial meant he was also competent to represent himself? Although the U.S. Supreme Court held in *Indiana*

v. Edwards, 554 U.S. 164 (2008) that the standard for competency to stand trial and the standard for competency to represent oneself were not equivalent, the criteria for evaluating the latter remain unspecified and thus presents a challenge for forensic psychiatrists.

Application of Sexually Dangerous Person Laws to Individuals With No Prior Sexual Offending Conviction

Nadia Gilbo, MD
Forensic Psychiatry Fellow

Marina Nakic, MD
Assistant Professor of Psychiatry

Law and Psychiatry Division
Department of Psychiatry
Yale University School of Medicine
New Haven, Connecticut

An Intellectually Disabled Defendant Who Was Found Not Competent, Not Restorable, and Not Committable Can Be Subjected to Sexually Dangerous Person Commitment Proceedings

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In *United States v. White*, 927 F.3d 257 (4th Cir. 2019), the U.S. Court of Appeals for the Fourth Circuit reversed and remanded the district court's dismissal of a federal sexually dangerous person civil commitment proceeding against a defendant who was found not competent and not restorable due to an intellectual disability, not committable, and had never been convicted of any sexual offenses. The Fourth Circuit held, first, that the statute authorized commitment in such circumstances and, second, that it did not violate the Due Process Clause because procedural safeguards are sufficient to protect the individual's liberty interests.

Facts of the Case

Oliver White, a Native American man diagnosed with intellectual disability, was indicted by multiple federal grand juries in Montana for abusive sexual contact and aggravated sexual abuse of females under the age of 12 in 2009, 2012, and 2016. In 2009, as

part of a deferred prosecution agreement, charges against Mr. White were dismissed on the condition that he reside with his mother and have no further contact with minors. While detained for his 2012 charges, Mr. White was found not competent to stand trial due to his intellectual disability and to not meet federal statutory criteria for civil commitment. The court dismissed the charges against him and released him.

During pretrial detention for his 2016 charges, Mr. White was again found not competent to stand trial, not restorable, and not civilly committable. This time, the government filed a certificate under 18 U.S.C. § 4248 (2012), asserting that Mr. White was a sexually dangerous person based on his prior conduct and petitioned the district court to commit him to the custody of the attorney general.

Federal statute 18 U.S.C. § 4248 was enacted by Congress as part of the Adam Walsh Child Protection and Safety Act and added to a set of federal prison-related mental health statutes authorizing civil commitment of federal prisoners deemed sexually dangerous. Commitment requires proof by clear and convincing evidence that the prisoner engaged or attempted to engage in sexually violent conduct; has a serious mental illness or disorder; and, if released, would have serious difficulty refraining from sexually violent conduct.

In response to governmental action, Mr. White's counsel moved for the appointment of a guardian *ad litem*, dismissal of the § 4248 certificate, and, alternatively, for a competency hearing, contending that Mr. White's mental incompetence should preclude a § 4248 hearing.

In April 2018, Mr. White was again found not committable based on dangerousness. In May 2018, a magistrate judge granted Mr. White a motion for a guardian *ad litem* and issued a Memorandum and Recommendation recommending that the court deny Mr. White's motion to dismiss the § 4248 proceedings or, alternatively, hold a competency hearing. In September 2018, following *de novo* review of the Memorandum and Recommendation, the district court granted Mr. White's motion for a competency hearing and, pending a hearing, denied the motion to dismiss. In December 2018, the district court found Mr. White not competent and granted his motion to dismiss. The court held that § 4248 allowed it to dismiss proceedings against an incom-