

duty not to harm a defendant and to disclose the limits of confidentiality.

Protections against Indefinite Solitary Confinement for Death Row Inmates Awaiting Resentencing

Adam J. Sagot, DO

Fellow in Forensic Psychiatry

Clarence Watson, JD, MD

Director, Forensic Psychiatry Fellowship

Department of Psychiatry

Perelman School of Medicine

University of Pennsylvania

Indefinite Solitary Confinement on Death Row without Regular Justification for Need Violates the Eighth Amendment

DOI:10.29158/JAAPL.210042L2-21

Key words: solitary confinement; cruel and unusual punishment; deliberate indifference; procedural due process; expert testimony

In *Porter v. Pennsylvania Department of Corrections*, 974 F.3d 431 (3d Cir. 2020), an inmate argued that continued placement on indefinite solitary confinement violated Eighth and Fourteenth Amendment protections following the *vacatur* of his death sentence. Following summary judgment in favor of the defendants, the inmate appealed to the U. S. Court of Appeals for the Third Circuit. In reversing and remanding aspects of the lower court's ruling, the circuit court recognized the substantial risks of serious psychological and physical harm associated with prolonged solitary confinement as the foundation for Eighth and Fourteenth Amendment violations.

Facts of the Case

In 1986, Ernest Porter was convicted of first-degree murder and was sentenced to death. Mr. Porter was placed on death row at a maximum-security state prison, where he remained for more than 33 years in solitary confinement. Following his initial sentencing, Mr. Porter filed a petition under the Pennsylvania Post Conviction Relief Act (P.C.R.A., 42 Pa. Cons. Stat. Ann. § 5941 (1978)), which was

denied. Later, in 2003, a federal district court in the Eastern District of Pennsylvania granted Mr. Porter partial relief on the ground that the penalty phase verdict from his trial was unconstitutional. Accordingly, his death sentence was vacated, and the case was remanded for resentencing. The district court also ruled that the resentencing order would be stayed if either side appealed the decision.

Mr. Porter and the Commonwealth appealed the decision, and the district court's order was stayed. In 2007, the Third Circuit granted Mr. Porter's motion to temporarily postpone the pending federal appeals while Pennsylvania courts considered an additional P.C.R.A. petition filed by Mr. Porter. While his additional P.R.C.A. petition awaited resolution, Mr. Porter remained in solitary confinement on death row with his federal appeals in abeyance. In 2017, Mr. Porter filed suit claiming that his Eighth and Fourteenth Amendment rights had been violated due to his continued confinement on death row.

Mr. Porter's complaint cited the Third Circuit Court's decision in *Williams v. Secretary of Pennsylvania Department of Corrections*, 848 F.3d 549 (3d Cir. 2017), which held that inmates granted resentencing hearings have a due process liberty interest in avoiding indefinite solitary confinement. Mr. Porter argued that, because his death sentence had been vacated and he was awaiting resentencing, he was improperly held in indefinite solitary confinement without the opportunity to earn privileges or to be released from solitary confinement akin to other inmates who were not on death row. Mr. Porter also alleged that prolonged solitary confinement had irreversibly damaged his mental health and caused him to experience "severe anxiety, depression, panic, paranoia, bipolar mood swings, and at sometimes [sic] suicidal impulses" (*Porter*, p 443).

The defendants denied Mr. Porter's claims and filed a motion for summary judgment. In granting the defendants' motion, the magistrate judge reasoned that *Williams* did not give Mr. Porter procedural due process rights regarding solitary confinement because his death sentence remained active, Mr. Porter did not offer evidence of actual injury or deliberate indifference by individuals at Department of Corrections to support an Eighth Amendment claim, and Mr. Porter could not make a substantive due process claim using the same allegations supporting his Eighth Amendment claim. Mr. Porter appealed the decision to the Third Circuit Court of Appeals.

Ruling and Reasoning

In partially reversing and partially affirming the lower court's ruling, the Third Circuit Court of Appeals held that Mr. Porter's procedural due process rights had been violated by his prolonged solitary confinement considering the *vacatur* of his death sentence. In reaching its decision, the circuit court disagreed with the lower court's ruling that *Williams* did not provide Mr. Porter with procedural due process rights and noted further that *Williams* held that the Fourteenth Amendment did not permit prolonged solitary confinement without individualized determinations justifying such placement following the *vacatur* of a death sentence. The court was not persuaded by the magistrate judge's reasoning that *Williams* did not apply because Mr. Porter's death sentence remained active. On the contrary, the ruling explained that the stay of Mr. Porter's subsequent legal proceedings did not negate the *vacatur* of his death sentence, because he had been granted a new sentencing hearing. In reaching its conclusion, the court emphasized that *Williams* defined a vacated death sentence as a situation where a defendant had been initially sentenced to death but was subsequently granted a new sentencing hearing. The court held that Mr. Porter's circumstances fell within that definition.

Turning to the magistrate judge's denial of Mr. Porter's Eighth Amendment argument, the court rejected the supporting rationale that Mr. Porter did not offer evidence of actual injury or deliberate indifference by prison officials. The court explained that the determination of whether prison officials violated the Eighth Amendment requires a two-prong analysis: the deprivation must be "objectively, sufficiently serious; a prison official's act or omission must result in the denial of the minimal civilized measure of life's necessities" (*Porter*, p 441); and the prison official must be shown to have exhibited "deliberate indifference" with regard to the safety or health of the inmate. The court further clarified that an official is deliberately indifferent if the official possesses knowledge of and disregards an excessive risk to inmate health or safety. The court explained that the objective prong does not require evidence of actual injury, but merely requires that the conditions of incarceration posed a substantial risk of serious harm.

In support of its holding, the court stressed the existing case law and scientific research regarding the substantial risk of serious psychological and physical harm associated with prolonged solitary

confinement. In doing so, the court expressly recognized anxiety, panic, depression, posttraumatic stress disorder, psychosis, suicidal ideation, self-injurious behaviors, and general physical deterioration as potential effects of prolonged solitary confinement. In that vein, the court viewed Mr. Porter's 33-year solitary confinement as having had severe detrimental effects consistent with scientific and legal understanding of the harms of prolonged solitary confinement. The defendants argued that Mr. Porter was required to present expert medical testimony to satisfy the objective prong of the Eighth Amendment test. The court disagreed but indicated that medical testimony may be necessary to satisfy the subjective prong of the Eighth Amendment analysis to establish deliberate indifference in an adequacy of care claim, where a jury must determine whether a particular treatment or diagnosis fell below a professional standard of care.

The court further indicated that the subjective prong of the Eighth Amendment analysis requires evidence that prison officials possessed knowledge that the inmate faced a substantial risk of serious harm and then disregarded that risk by failing to take reasonable steps to reduce the risk. The court noted that an inmate may establish deliberate indifference by showing that the risk of harm "was longstanding, pervasive, well documented, or expressly noted by prison officials in the past such that defendants must have known about the risk" (*Betts v. New Castle Youth Dev. Ctr.*, 621 F.3d 249 (3d Cir. 2010), p 259). In finding in Mr. Porter's favor, the court pointed to several factors, including the defendants' institutional policies, that a reasonable jury could find demonstrated the defendants' knowledge of risks associated with prolonged solitary confinement and the defendants' disregard of that risk.

Discussion

In *Porter*, the appellate court addressed the constitutionality of prolonged solitary confinement on death row during the postponement of an inmate's legal proceedings following the *vacatur* of his death sentence. While the applicability of Fourteenth Amendment procedural due process rights were heavily argued in the case, consideration of whether prolonged solitary confinement, in the absence of individualized justification of need, constituted cruel and unusual punishment was central to the matter. The court clearly articulated the proper legal analysis

to be utilized in similar cases: objectively, whether the alleged deprivation was sufficiently serious and, subjectively, whether prison officials were deliberately indifferent to the inmate's health.

Ultimately, the *Porter* decision lessened inmates' burden in satisfying the objective prong by requiring that substantial risk of injury, not proof of actual injury, is demonstrated. Given that the legal, scientific, and medical literature are replete with information regarding the psychological and physical harms associated with prolonged solitary confinement, meeting that burden is easily within reach of similarly situated inmates. Accordingly, expert testimony may not be needed in such matters. Depending on the circumstances, it may be a more difficult task to satisfy the subjective prong in establishing the presence of deliberate indifference to an inmate's health, where proof that officials had knowledge of the risk of harm, but failed to curtail that risk, is required. Accordingly, expert testimony may be sought to establish whether prison officials recognized the risk of harm but failed to provide adequate treatment to reduce that risk.

Treatment Over Objection of an Inmate

Olga Gorshkalova, DO
Fellow in Forensic Psychiatry

J. Richard Ciccone, MD
Professor of Psychiatry
Director, Psychiatry and Law Program

University of Rochester Medical Center
Rochester, New York

Involuntary Treatment of an Inmate Requires Both a Determination of Dangerousness and Incompetence to Refuse

DOI:10.29158/JAAPL.210046-21

Key words: civil commitment; prisoners rights; right to refuse treatment

In *Winnebago County v. C.S. (In re C.S.)*, 940 N. W.2d 875 (Wis. 2020), the Wisconsin Supreme Court held that the Wis. Stat. § 51.61(1)(g)(3) (2015–2016) was facially unconstitutional because it allowed inmates who are involuntarily committed under Wis. Stat. § 51.20(1)(ar) (2013–2014) to be

treated over objection without a determination of dangerousness solely on the basis of incompetence to refuse medication.

Facts of the Case

In 2005, C.S. was convicted of an attack on another with the intent to disable or disfigure that resulted in great bodily harm (Mayhem, a Class C Felony). C.S. was sentenced to 10 years of incarceration followed by 10 years of extended supervision. Seven years into his incarceration, C.S. was given a diagnosis of schizophrenia. Winnebago County sought to commit C.S. to the Wisconsin Resource Center and medicate C.S. under the Wisconsin law that governs the involuntary commitment of an inmate, Wis. Stat. § 51.20(1)(ar) (2013–2014).

In 2014, C.S. challenged the constitutionality of the Wis. Stat. § 51.20(1)(ar), arguing that the commitment statute was facially unconstitutional because it allowed for involuntary commitment without a finding of dangerousness. This was rejected by the court because commitment serves a legitimate state interest. The circuit court extended both the commitment and involuntary treatment orders. C.S. appealed this decision to the Wisconsin Supreme Court.

Later in 2015, C.S. was released from prison. Although C.S. was no longer under commitment and involuntary treatment orders, the Wisconsin Supreme Court determined that the matter was not moot because other inmates could find themselves in similar circumstances. In January 2016, the Wisconsin Supreme Court upheld the circuit court's ruling that the Wisconsin Statute governing the involuntary commitment of an inmate did not violate an inmate's substantive due process rights and upheld the lower court decision.

C.S. also filed a motion in the Wisconsin Court of Appeals District II challenging the Wisconsin Statute governing the involuntary medicating of an inmate under § 51.61(1)(g) (2015–2016), claiming that the statute was unconstitutional and violated the Due Process Clause of the Fourteenth Amendment. In 2019, the court ruled that C.S. had not met the required burden of proof to find the statute facially unconstitutional. The court went on to rule that the state, under the *parens patriae* doctrine, had an interest of caring for inmates and a determination of dangerousness was not required for the administration of involuntary treatment to them. C.S. appealed to the Wisconsin Supreme Court.