

protections for patients before an actual placement in a psychiatric hospital occurs” (*A.S.*, p 167).

The court’s second holding pertained to the superior court’s incorrect application of the standard of proof. The court found that *A.S.*’s due process rights were violated when the superior court applied a standard of preponderance of the evidence, rather than clear and convincing evidence, to determine his likelihood of harm at the time of his habeas hearing. The court specifically referenced the U.S. Supreme Court ruling in *Addington*, which recognized that “civil commitment for any purpose constitutes a significant deprivation of liberty” and that due process requires the State to justify confinement by a clear and convincing standard of proof (*Addington v. Texas*, 441 U.S. 418 (1979), p 425).

Discussion

A.S. v. LincolnHealth addresses several topics of relevance to the forensic psychiatrist and mental health professional. First, the case highlights a hospital’s inattention to statutory procedure and due process in an involuntary civil commitment case. Although the hospital was stating that its priority was the safety of the individual and community, the court nevertheless found that it did not appropriately balance these concerns with *A.S.*’s due process rights and ultimately found that it violated laws intended to protect an individual’s right to liberty. The hospital noted that it had been practicing in this manner for years without objection. Although the findings of the case are specific to Maine, the ruling serves as a reminder for professionals to be aware not only of “common practice” hospital procedures for emergency involuntary civil commitment, but also statutory procedures designed to protect the individual with mental illness being considered for commitment.

Historically, the grounds for civil commitment were founded on two principles, *parens patriae* (providing care to mentally ill individuals who are unable to take care of themselves) and police power (states’ protection of the community from dangerously mentally ill individuals). Forensic and mental health professionals should be aware of these principles and that they could create biases that could lead to hospital staff, lawyers, and judges weighing the dangerousness of the individual more heavily against the deprivation of their liberty. Throughout history there have been many differing opinions on how to weigh the benefit of involuntary commitment versus restriction of liberty, with swings to either extreme at various points. The 1979 U.S. Supreme Court ruling in *Addington*,

cited by the court in this case, acknowledged that the deprivation of liberty, stigma of civil commitment, and mandated treatment required a standard of proof higher than preponderance of evidence. Providers should be aware that an emphasis on treatment without due consideration of liberty deprivation could lead to the unintended consequence of due process violations in the pursuit of *parens patriae* and police power, as seen in *A.S. v. LincolnHealth*.

Failure to Present Mental Health History at Federal Capital Sentencing

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Defense Attorney’s Failure to Present a Defendant’s Mental Health History May Lead to Prejudice at Federal Capital Sentencing

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In *United States v. Barrett*, 985 F.3d 1203 (10th Cir. 2021), the Tenth Circuit Court of Appeals considered whether the district court erred in denying relief to a defendant where it found the defense counsel’s performance was deficient but without prejudice. The defendant, Kenneth Barrett, was sentenced to death for intentionally killing a state police officer. On appeal, Mr. Barrett asserted ineffective assistance of counsel at sentencing in violation of the Sixth Amendment, arguing that counsel’s omission of evidence regarding his mental impairments and abusive upbringing was deficient performance and resulted in prejudice. The Tenth Circuit reversed the district court’s ruling and found prejudice, vacated Mr. Barrett’s capital punishment sentence, and remanded for resentencing.

Facts of the Case

In 1999, the Oklahoma State Drug Task Force obtained a no-knock, day-or-night search warrant for Kenneth Barrett's house after receiving a tip that Mr. Barrett was manufacturing and distributing methamphetamines in his home and that Mr. Barrett planned to kill any officer who tried to arrest him. State troopers and a tactical team, executing the warrant, approached Mr. Barrett's house after midnight. The front vehicle began taking gunfire and Trooper David Eales was shot three times by Mr. Barrett upon exiting the vehicle, later dying from his injuries. Mr. Barrett was apprehended after shooting another state trooper in the shoulder and sustaining his own injuries.

Mr. Barrett underwent separate state and federal trials. At federal trial, the jury found him guilty of three charges, including intentionally killing a state police officer who was completing his official duties during the commission of a drug trafficking crime. Subsequently, the government petitioned the court for a separate sentencing hearing under the Federal Death Penalty Act, 18 U.S.C. §§ 3591-3598 (2006). At the hearing, the government presented aggravating evidence that included Mr. Barrett's ownership of several firearms, witness statements that Mr. Barrett threatened to kill anyone who attempted to arrest him, and evidence of the impact that the trooper's death had on the trooper's family. Mr. Barrett's attorneys presented mitigating evidence but made no significant mention of his history of mental illness or brain injury. At the recommendation of the jury, Mr. Barrett was sentenced to life imprisonment without the possibility of release on the first two federal charges and to death for the third charge.

Two other appeals were brought forth by Mr. Barrett to the Tenth Circuit following the initial conviction and sentencing. The first appeal was affirmed by the Tenth Circuit. Mr. Barrett's subsequent petition for relief to the district court, which included a claim of ineffective assistance of counsel, was denied. Mr. Barrett's second appeal to the Tenth Circuit was brought under 28 U.S.C. § 2255 (2008), which allows federal prisoners to petition the court that imposed a sentence to vacate, set aside, or correct the sentence if it was imposed in violation of the constitution. The court of appeals, considering his claim of ineffective assistance of counsel, remanded the case for the district court to hold an evidentiary hearing to consider whether Mr. Barrett's trial counsel was deficient in not investigating his mental health and

to determine if he suffered prejudice due to any deficiency of counsel. Upon review, the magistrate judge of the district court concluded that Mr. Barrett suffered from deficient counsel because counsel did not investigate his mental health history and abusive upbringing as possible evidence to be presented in court and that this deficiency led to prejudice during the penalty phase of Mr. Barrett's trial. The district court adopted the magistrate judge's finding that counsel was deficient. But the district court rejected the finding that deficient counsel led to prejudice, finding that the jury would have not placed much weight on the testimony when considering the totality of evidence presented and that the jury would have rejected the mental health diagnoses provided by Mr. Barrett's expert witnesses. Mr. Barrett appealed, arguing that the district court should have adopted the magistrate judge's finding that Mr. Barrett's deficient counsel caused prejudice.

Ruling and Reasoning

In this review of the facts and circumstances regarding Mr. Barrett's second appeal, the Tenth Circuit addressed whether Mr. Barrett's deficient counsel resulted in prejudice. Citing *Wilson v. Trammell*, 706 F.3d 1286 (10th Cir. 2013), the court of appeals stated that the determination of prejudice is adjudged when there is a reasonable probability that at least one juror would vote against a death sentence when considering the balance of the aggravating and mitigating factors. After a review of the evidence presented at the district court evidentiary hearing, which included Mr. Barrett's mental health history and the details of his abusive childhood, the Tenth Circuit reversed the district court's decision and held that there was "a reasonable probability at least one juror would not have recommended a death sentence had defense counsel introduced evidence of defendant's mental impairments and abusive upbringing at the sentencing hearing" (*Barrett*, p 1229). The court of appeals reversed the district court's decision in finding prejudice due to deficient counsel. Mr. Barrett's death sentence was vacated, and the case was remanded for sentencing on the associated charge.

The mitigating effects of Mr. Barrett's psychiatric conditions and turbulent upbringing were the primary matters of analysis in the court's ruling. The court of appeals cited *Anderson v. Sirmons*, 476 F.3d

1131 (10th Cir. 2007), noting a finding of prejudice at sentencing that had stemmed from a failure of counsel to present evidence of an abusive mother, brain injury, and substance use that exacerbated the defendant's "mental deficits and impairments." In Mr. Barrett's case, evidence pertaining to Mr. Barrett's psychiatric history and developmental adversities were not presented to the jury at sentencing. During the magistrate's evidentiary hearing, Mr. Barrett's mental health experts opined that he was diagnosed with bipolar disorder, posttraumatic stress disorder (PTSD), and "organic brain damage," and had previous head injuries and a history of fetal alcohol exposure. It was also reported that Mr. Barrett had a history of suicidal ideation, prior suicide attempts, and three inpatient psychiatric hospitalizations. The defense also presented evidence of Mr. Barrett's tumultuous upbringing, which included physical abuse, emotional abuse, and neglect, which the court opined that some jurors "likely would have found sympathetic" (*Barrett*, p 1232). Although the government provided a rebuttal to the defense's expert testimony, the Tenth Circuit concluded that the reported psychiatric conditions were plausible and would have persuaded at least one juror "that the balance of aggravating and mitigating circumstances did not warrant death" (*Barrett*, p 1224, quoting *Wilson v. Trammell*, 706 F.3d 1286 (10th Cir. (2013), p 1305). In addition, the court of appeals also noted that "binding precedents recognize that evidence of mental impairments has substantially more mitigating value when it helps explain the defendant's criminal behavior" (*Barrett*, p 1222–3). The court of appeals also found that a plausible connection existed between Mr. Barrett's shooting of Trooper Eales and his reported psychiatric conditions.

The court of appeals also stated that the balance of aggravating and mitigating evidence can affect a finding of prejudice even if counsel was deficient in performance. The court noted that mental health evidence can have a double-edged effect and highlight a defendant's "continuing threat," which may not result in prejudice if not presented (*Barrett*, p 1231, quoting *Gilson v. Sirmons*, 52 F.3d 1196 (10th Cir. 2008, p 1250).

Discussion

In *Barrett*, the Tenth Circuit examined the role of the defendant's mental health history within capital sentencing proceedings and whether the failure to

present such evidence could lead to prejudice as part of a claim of ineffective assistance of counsel in violation of the Sixth Amendment. In assessing the balance of mitigating and aggravating circumstances of the case at sentencing, the court of appeals ruled that evidence of Mr. Barrett's psychiatric conditions and abuse history would have been positively persuasive to at least one juror with a reasonable probability that one juror would have recommended a life sentence. Although the mitigating effects of mental health history for individuals facing the death penalty were well substantiated in *Barrett*, the court also noted that a defendant's psychiatric history could present as an aggravating factor, especially in cases where successful treatment and recovery are not perceived as attainable.

Barrett illustrates the importance of a defendant's mental health history in postconviction federal capital sentencing and highlights the effect that psychiatric illness can have during these sentencing proceedings. This case highlights how such history can often be viewed as mitigating but also provides a reminder that in some cases it can be used as aggravating evidence. Psychiatrists should be aware of the double-edged effect of such information in the evaluation process.

Inmate Failure to Protect Claims and the Eighth Amendment

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Inmate's Eighth Amendment Right to Protection Was Not Violated When Prison Official Reasonably Responded to Threat

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In *Mosley v. Zachery*, 966 F.3d 1265 (11th Cir. 2020), the Eleventh Circuit Court of Appeals