

## Transitional Hearing Requirements under the Kansas Sexually Violent Predator Act

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### Standards for Recommitment Under a State Sexually Violent Predator Act Clarified

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In the case of *In re Care and Treatment of Quillen*, 481 P.3d 791 (Kan. 2021), a state court of appeals had held that in order for the state to continue civil commitment, due process considerations required the state to demonstrate at a transitional release hearing that Richard Quillen continued to have a mental abnormality that seriously impaired his ability to control his behavior. On appeal, the Supreme Court of Kansas detailed the legally proper standard for continued civil commitment under the Kansas Sexually Violent Predator Act (KSVPA). The court also clarified the proper jury instructions vis-à-vis a “control” determination.

#### Facts of the Case

In 1990, Richard Quillen was convicted of multiple sex crimes involving children. He was scheduled for release from prison in 2006, but before his release, the state of Kansas petitioned to have Mr. Quillen civilly committed under KSVPA (Kan. Stat. Ann. § 59-29a01, et seq (2003)). Mr. Quillen entered into a consent decree, under the provisions of which he was deemed a sexually-violent predator, and remanded to a secure state hospital facility. Under the KSVPA, committed persons are entitled to an annual review, which could be secured by contesting their annual report and petitioning for a transitional release. At the hearing, committed persons would be required to demonstrate probable cause that their mental abnormality, or personality disorder, has sufficiently changed so as to allow them to be safely placed in transitional

release (Kan. Stat. Ann. § 59-29a08(d)). But, per a provision of Mr. Quillen’s consent decree, this review hearing was waived, and he was to have a full hearing. At a transitional hearing, the state is required to demonstrate, beyond a reasonable doubt, that the individual’s mental abnormality remains such that if transitionally released, the individual is likely to engage in repeat acts of sexual violence (Kan. Stat. Ann. § 59-29a08(g)).

In 2013, Mr. Quillen requested a hearing but the district court denied his request. Mr. Quillen appealed, and the state responded by suggesting that Mr. Quillen’s appeal be construed as a motion for remand, thus affording him a right to counsel, a right to an independent evaluation, as well as a right to choose a jury trial. The remand was approved and Mr. Quillen opted for a jury trial. But several weeks before his trial commenced, a legislative enactment significantly altered the provisions of KSVPA, to include the elimination of a respondent’s right to a jury trial. The district court then decided that, under the modified KSVPA (Kan. Stat. Ann. § 59-29a08 (2015)), Mr. Quillen no longer had the right to choose a jury trial. At his subsequent bench trial, the district court found that, as a result of his ongoing mental illness, he was likely to engage in repeat acts of sexual violence if placed in transitional release. Mr. Quillen appealed, arguing that the district court erred in retroactively applying the revised KSVPA. The appeals court agreed, and remanded the case to the district court for a jury trial. But before the second trial could begin, Mr. Quillen had a stroke, which affected his ability to speak. Citing the physiological changes resulting from his stroke, Mr. Quillen now moved for discharge. Following a hearing on the matter, the district court denied the motion, finding Mr. Quillen had not shown that he had undergone a permanent physiological change that had rendered him incapable of committing sexually violent offenses.

In 2018, Mr. Quillen’s case proceeded to trial. The district court informed the jury that the state had to prove beyond reasonable doubt that Mr. Quillen’s mental abnormality remained such that if placed in transitional release, he would be likely to engage in repeat acts of sexual violence. Mr. Quillen objected to these instructions, asserting that to comply with the standard delineated in *Kansas v. Crane*, 534 U.S. 407 (2002), the jury should be instructed to consider whether his mental abnormality resulted in significant difficulty controlling his dangerous behavior. The court rejected Mr.

Quillen’s request. The jury found Mr. Quillen was not safe to be placed in transitional release. On appeal, a court panel found that at both the initial and annual review proceedings, the fact finder must conclude, beyond a reasonable doubt, that the respondent has serious difficulty controlling his behavior. The appellate court panel also ruled that the district court’s failure to make a separate finding on the matter was not a harmless error. The court then vacated the verdict, and remanded to the district court for a new trial. The Supreme Court of Kansas granted the state’s petition for review.

#### Ruling and Reasoning

The Kansas Supreme Court focused much of its opinion on the legal appropriateness of the proposed jury instructions, namely, whether due process required the district court to give the specific, additional instructions that Mr. Quillen had proposed. The court acknowledged that civil commitment constituted a significant liberty deprivation, but sought to balance this interest with the state’s legitimate interest in “protecting the public from dangerous individuals” (citing *Addington v. Texas*, 441 U.S. 418, 425 (1979)). The court noted that in *Crane* the Supreme Court held that, in civil commitment proceedings, substantive due process required proof that respondents have significant difficulty controlling their dangerous behavior. In fact, after *Crane*, Kansas had amended its definition of a sexually violent predator so as to include the *Crane* holding (Kan. Stat. Ann. § 59-29a02(a) (2003)).

The Kansas Supreme Court noted that, at initial commitment, the KSVPA required that the state demonstrate that respondents have a mental abnormality making it difficult to control their behavior. But, at the transitional release hearing, the KSVPA only required proof that respondents’ mental abnormality remained such that if transitionally released they would be likely to engage in acts of sexual violence. Relying on *Kansas v. Hendricks*, 521 U.S. 346 (1997), and *Crane*, Mr. Quillen had argued that substantive due process required a specific “control” determination, not just the more general finding of a likelihood of sexually violent behavior. The court noted that the language in *Crane* points out the essential distinction between a dangerous sexual offender, whose serious mental illness or abnormality permits civil commitment, and a “dangerous but typical recidivist convicted in an ordinary criminal case” (*Crane*,

p 413). Essentially, Mr. Quillen was asserting that the state would have to demonstrate not only that he had a mental abnormality, but that due to said abnormality, he had serious difficulty controlling his behavior. But the court rejected this formulation, arguing that neither *Hendricks* nor *Crane* addressed the matter at hand, i.e., the applicable legal standard for continued commitment. The court said that in *O’Connor v. Donaldson*, 422 U.S. 563, (1975), the U.S. Supreme Court provided the constitutional standard for continued commitment. In *O’Connor*, the Court held that commitment could not constitutionally continue if the basis for initial commitment no longer existed. Accordingly, the Kansas Supreme Court ruled that continued commitment only required that the state demonstrate that the individual remained both mentally ill and dangerous.

Finally, the court addressed the subject of whether *Crane* requires that a jury be specifically instructed as to a “control” finding. The court reviewed multiple state and federal appellate decisions addressing the matter of whether, per *Crane*, a specific jury instruction as to lack of control was required. The court detailed that, in the majority of the decisions, the appellate courts had not required specific instructions as to lack of control. Instead these courts had held that the lack of control determination could be grounded by establishing a nexus between the person’s mental abnormality and the person’s dangerousness.

#### Discussion

In the closing moments of 1931’s *M* (Lang F, director), the suspected child murderer-cum-sexual-psychopath is dragged before an ostensible “jury of his peers.” He has been abducted by a large force of Berlin’s criminals and dragged into a makeshift courtroom. But the defendant refuses to accept the seeming “fitness” of their ploy. He screams at them that he is not like them, because, as he says, they could go back to “regular” jobs tomorrow, and give up the criminal life. He cannot. He is unable to control his urges. Here, the elemental “involuntariness,” which has served as the theoretical justification for the modern civil commitment of sex offenders, is presciently portrayed.

But, in *Allen v. Illinois*, 478 U.S. 364 (1986), as well as in *Hendricks*, vigorous dissents were written questioning the “legitimacy” of state civil-commitment arrangements for sex offenders. The dissenters

asserted that while said proceedings seemed to be criminal in nature, they were being adjudicated in a civil context, and thus the offenders were not afforded standard criminal court rights.

More recent U.S. Supreme Court decisions dealing with sex offenders, e.g., *Crane*, have not raised similar objections, and instead have focused on the offender's rights within these arrangements. At least in the context of the continued civil commitment of sex offenders, the state supreme court in *Quillen*, as well as the clear majority of the appellate court decisions reviewed in *Quillen*, found adequate the more implicit jury instructions linked to the *O'Connor* "nexus," and found unnecessary more specific jury instructions as to lack of control.

## Equitable Tolling and Extension of a Writ of Habeas Corpus Filing Deadline

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### Entitlement to Equitable Tolling Due to Mental Illness Not Demonstrated

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In *Wallace v. Superintendent Mahanoy SCI*, 2 F.4th 133 (3d Cir. 2021), the Third Circuit Court of Appeals considered Joseph Wallace's claim that his mental illness impaired his ability to file for federal *habeas* relief within the one-year filing deadline and reviewed the district court's ruling that he did not meet the standards for either equitable tolling or actual innocence. The Third Circuit ruled that he had not met the standards for relief.

#### Facts of the Case

On February 28, 2000, Mr. Wallace got into bed with his wife, waited ten to fifteen minutes, and then began stabbing her in the chest. She was stabbed

several times and died soon after from her wounds. Mr. Wallace then showered, placed the knife in the drawer, and left his home. He took a train to Philadelphia where he was apprehended at the train station. While in police custody, Mr. Wallace said that he acted on a belief that his wife's death would end her misery and "set her spirit free." Mr. Wallace was charged with multiple counts of murder. He was evaluated by two psychologists in June 2000 and was found competent to proceed. Regarding his sanity, both psychologists opined that Mr. Wallace met criteria for guilty but mentally ill (GBMI), but did not meet the stricter M'Naughten standard of insanity. The doctors asserted that Mr. Wallace appeared to know that what he did was wrong, given his attempts to conceal the crime. In December 2000, Mr. Wallace pled GBMI to third-degree murder and was given a prison sentence of 23.5 to 47 years. Mr. Wallace did not pursue a direct appeal.

In the fall of 2012, Mr. Wallace spoke with a prison doctor who encouraged him to pursue legal remedies. In September 2013, Mr. Wallace filed a *pro se* petition for postconviction relief under Pennsylvania's Post Conviction Relief Act (PCRA), 42 Pa. Cons. Stat. § 9541, et. seq. (1988), stating that methylphenidate caused his psychotic episode. The PCRA court rejected the argument that the petition's untimeliness should be excused based on "newly discovered facts," as it did not include new information, but rather a different explanation for his mental health at the time of the offense. Mr. Wallace appealed this decision, but it was affirmed by the superior court in November 2014. He then appealed to the Pennsylvania Supreme Court, which denied his appeal in July 2015.

In September 2015, Mr. Wallace filed a *pro se* petition for a writ of *habeas corpus* based on involuntary intoxication and ineffective assistance of counsel. The magistrate judge issued a detailed report, which stated that, because Mr. Wallace did not initially appeal, his deadline to file a *habeas* petition was January 7, 2002. The judge opined that equitable tolling did not allow an extension of the deadline as Mr. Wallace did not identify extraordinary circumstances that prevented him from timely filing. Mr. Wallace then filed a timely *pro se* notice of appeal and applied for a certificate of appealability (COA), which was granted by the Third Circuit Court. A panel of the court of appeals granted the COA to review Mr. Wallace's claims that he was entitled to