

On the one hand, some might be disappointed that seemingly new psychiatric evidence is not sufficient to sway an appellate court to grant a writ of *habeas corpus*. This comports with what has previously been written in this journal, “[w]hen reviewing ineffective assistance claims, federal courts of appeals seem willing to accept a low bar for mental health investigations” (Hiromoto L, Keltner C, Frizzell W, *et al.* PTSD and trauma as mitigating factors in sentencing in capital cases. *J Am Acad Psychiatry Law*. 2021 Nov; 50(1):22–33, p 28).

The lesson for forensic mental health experts and the defense bar is that they should maximize thoroughness and diligence during the trial and sentencing process. The result in *Thornell* supports the contention of some scholars that “it behooves capital defendants to research and present mitigation evidence of PTSD, trauma, and other mental illness at the trial stage. Appellate courts are much less likely to provide relief via *habeas corpus* after conviction and sentencing” (Hiromoto *et al.*, p 28).

That said, the glass-half-full interpretation is that the Supreme Court stood by its precedent regarding grossly deficient mitigation investigation. In its decision, the *Thornell* majority contrasted Mr. Jones’s case with those where it ruled in favor of the *habeas* petitioner. In those cases, “defense counsel introduced little, if any, mitigating evidence at the original sentencing” (*Thornell*, p 1314). In other words, the Court indicated that it would not rubber stamp sentences in cases where significant mental health evidence was ignored or not discovered.

In that sense, *Thornell* represents a continuation of the Supreme Court’s approach to ineffective assistance of counsel claims based on an alleged failure to present evidence related to mental health. *Habeas corpus* is only granted when the overlooked mental health concerns are significant and might have changed the outcome.

Prolonged Segregation of Those Incarcerated with Serious Mental Illness

Joellyn Sheehy, MD
Fellow in Forensic Psychiatry

Caren Teitelbaum, MD
Assistant Professor of Psychiatry
Law and Psychiatry Division

Department of Psychiatry
Yale University School of Medicine
New Haven, Connecticut

An Incarcerated Individual with Serious Mental Illness and Problematic Behaviors May Be Placed in Solitary Confinement-like Conditions for Extended Periods

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Key words: deliberate indifference; segregation; serious mental illness; restrictive conditions; liberty interest

In *Cartagena v. Lovell*, 103 F.4th 171 (4th Cir. 2024), the U.S. Court of Appeals for the Fourth Circuit affirmed the district court’s ruling to dismiss the claims of an incarcerated individual with serious mental illness who asserted that the conditions of his confinement in a specialized unit violated his First, Fourth, and Fourteenth Amendment rights, the Americans with Disabilities Act (ADA), and the Rehabilitation Act (RA). In a split decision, the majority ruled that Angel Cartagena failed to prove a claim.

Facts of the Case

Mr. Cartagena was incarcerated within the Virginia Department of Corrections (VDOC). In November 2019, he was moved to the Secure Diversionary Treatment Program (SDTP) at River North Correctional Center. The decision was made by a panel of prison officials, reasoning that he was “seriously mentally ill” and had “assaultive, disruptive, and/or unmanageable” (*Cartagena*, p 176) behaviors prohibiting him from functioning in the general prison population.

Mr. Cartagena was kept at SDTP for 18 months in the most restrictive unit. In his claim, Mr. Cartagena alleged that, among other limitations, individuals were held in their cells for 21 hours per day; were strip searched, placed in handcuffs, and attached to a “dog leash” when leaving their cell; and spent outside recreation time in segregation cages. Additionally, they were not permitted to attend religious services. VDOC officials noted that the program was designed for individuals with violent and difficult to manage behaviors and, by adhering to treatment programming, such individuals could receive increasing freedoms and integration into the prison population.

Throughout his time at SDTP, Mr. Cartagena filed multiple grievances with prison officials regarding the conditions of his confinement, complaining

that the restrictive environment negatively affected his mental health.

In April 2021, Mr. Cartagena attempted suicide and required surgical intervention. He was later transferred to a state prison facility, where he attempted suicide two more times. In August 2021, he was transferred to a medical hospital for “intensive care” for his mental health.

Mr. Cartagena brought an action against prison officials, stating that his confinement in the SDTP violated his First, Eighth, and Fourteenth Amendment rights. He also claimed violations of the ADA and the RA, seeking \$80,000 in damages and an injunction against future placement in the program.

The prison officials filed a motion to dismiss Mr. Cartagena’s action, and the district court granted the motion based on a failure to state a claim. Mr. Cartagena appealed, contending that the court erred in dismissing his Eighth and Fourteenth Amendment claims as well as the two statutory discrimination claims.

Ruling and Reasoning

The appeals court affirmed the lower court’s dismissal in a split decision. The majority noted that, even if Mr. Cartagena experienced harmful treatment, he did not show the required *mens rea* component for a “deliberate indifference” violation of the Eighth Amendment, because he did not demonstrate that officials “consciously disregard[ed] a substantial risk” (*Farmer v. Brennan*, 511 U.S. 825 (1994), p 839, referencing the Model Penal Code § 202(2)(c) (1985)). Rather, they assigned him to a program designed for his diagnoses and reacted promptly to his suicide attempts. Moreover, because restrictions might be lifted by complying with the program, Mr. Cartagena had control over his conditions.

Regarding Mr. Cartagena’s Fourteenth Amendment claim, the court deferred to state law or policy to establish prohibitions for his conditions of confinement and to determine whether they were “harsh and atypical.” In doing so, the court outlined three considerations: the magnitude of confinement, whether the period was indefinite, and the collateral consequences. Considering the three criteria collectively, the court concluded that, although the magnitude of the conditions weighed in Mr. Cartagena’s favor, the length of his confinement did not because the relaxation of restrictions was contingent on Mr. Cartagena’s own conduct, giving him control over his placement and

arguing against its consideration as indefinite. They did not find collateral consequences.

Mr. Cartagena claimed discrimination by VDOC officials, stating that, because of his mental illness and subsequent placement, he was precluded from interacting with nondisabled peers and participating in prison employment. The court upheld the dismissal of the ADA and RA claims, stating that, because the SDTP was designed for individuals with his diagnoses and behaviors that are difficult to manage, he was not qualified to stay in general population and therefore could not be considered “qualified” under the ADA or RA. Additionally, the court stated that Mr. Cartagena had refused a “reasonable accommodation,” namely, treatment of his mental illness, which could have integrated him back into the general population.

Dissent

The dissent opined that Mr. Cartagena did indeed state a claim and that the majority failed to apply the more “liberal pleading standard” to a *pro se* complaint, including requiring the appeals court to assume Mr. Cartagena’s factual allegations as true per *Erickson v. Pardus*, 551 U.S. 89 (2007). The dissent noted that Mr. Cartagena alleged he was forced, against his will, to comply with treatment recommendations, not that he was noncompliant.

Regarding Mr. Cartagena’s Eighth Amendment claim, even if the premise that Mr. Cartagena was non-adherent to treatment were true, the dissent disagreed with the majority’s conclusion that, because a path to fewer restrictions existed, prison officials could not be found deliberately indifferent. The dissent asserted that such a position would inappropriately limit the availability of future Eighth Amendment conditions of confinement claims. The dissent also disagreed with the majority’s holding that the appellees could not have been deliberately indifferent, referring to Mr. Cartagena’s multiple grievances and the court’s own precedent, which established that the negative impact of prolonged segregation on mental health should be “obvious” to corrections professionals. Even without evidence of the appellee’s “actual knowledge,” the risks for an individual with serious mental illness were “sufficiently obvious,” and therefore, the claim was supported.

Regarding the Fourteenth Amendment claim, the dissent cited precedent (*Incumaa v. Stirling*, 791 F.3d 517 (4th Cir. 2015)) that greater weight be placed on the magnitude of confinement restrictions. The dissent agreed with the majority that the

magnitude of Mr. Cartagena's confinement restrictions met the threshold to qualify as a deprivation of liberty interests, whereas the length of confinement and collateral consequences did not. The dissent, however, placed significantly more weight on the first factor, concluding that Mr. Cartagena's rights were indeed violated. It noted that Mr. Cartagena sufficiently pleaded a liberty interest given that VDOC officials did not follow their own policy of providing due process, which includes a formal hearing, when detaining him in the program.

Regarding the ADA and RA violations, the dissent stated that Mr. Cartagena established a claim for violation of the ADA, but not the RA. Mr. Cartagena asserted that his treaters recommended a less restrictive unit; thus, he was qualified for a less restrictive environment than the SDTP. Consequently, he was otherwise qualified to receive benefits of which he was deprived, in violation of the ADA and RA protections. The ADA specifies that the disability must be a motivating factor for discrimination, whereas the RA requires that it be the sole reason. Given that Mr. Cartagena was placed in the program because of both his mental illness and dangerous behavior, the dissent concluded that Mr. Cartagena established a claim for violation of the ADA only.

Discussion

This case addresses the constitutional rights of incarcerated individuals with serious mental illness (SMI) and the conditions of confinement that are acceptable for those who are difficult to treat. Both the majority and dissent expressed strongly worded opinions, which differed categorically in their findings. The resultant holding may have stark consequences for incarcerated individuals with SMI and a higher bar for claims of civil liberty violations.

The majority's finding that Mr. Cartagena could not state a claim because a corrections policy outlined a pathway for him to attain fewer restrictions does not consider the accessibility of the path or any actual therapeutic basis for the designated path. Although compliance and participation may be reasonable expectations for some, the disability inherent in psychotic illness and certain personality disorders may preclude a person's ability to adhere to certain requirements. The result, as in this case, may be extended periods of highly restrictive confinement. The court's finding gives significant latitude to prison officials to design programs purporting to be "therapeutic" and then hold individuals with SMI in segregation essentially indefinitely until they are able to comply.

By contrast, the American Psychiatric Association's Position Statement on Segregation of Prisoners with Mental Illness is clear in its opposition to prolonged segregation of individuals with SMI because of the known risks for harm (American Psychiatric Association. *Psychiatric Services in Correctional Facilities*, Third Edition. Washington, DC: American Psychiatric Association; 2016, pp. 61–6).

Clinicians and forensic experts have an important role in educating corrections staff and courts about legitimately therapeutic interventions. Although Mr. Cartagena's treaters recommended a less restrictive setting, a formal forensic assessment may have further delineated the risks associated with his confinement and recommendations for appropriate treatment. Moreover, had Mr. Cartagena's attorneys requested an evaluation of the mental health risks of his conditions of confinement, the consultant could have provided additional education to the court.

Excessive Force in Involuntary Mental Health Examination

Eri Shoji, MD

Fellow in Forensic Psychiatry

Catherine Burke, PsyD

Assistant Professor of Psychiatry

Law and Psychiatry Division

Department of Psychiatry

Yale University School of Medicine

New Haven, Connecticut

Fatal Shooting by Law Enforcement During Attempted Detainment of a Person with Mental Illness Is Not Always Unconstitutional

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In *Teel v. Lozada*, 99 F.4th 1273 (11th Cir. 2024), the U.S. Court of Appeals for the Eleventh Circuit ruled on a case in which a deputy fatally shot Susan Teel while attempting to detain her for an involuntary mental health examination. The deputy was found not guilty at trial, and Mrs. Teel's estate appealed several trial rulings.

Facts of the Case

In 2017, Mrs. Teel attempted suicide by cutting her wrists with a kitchen knife. Her husband, Dr. Dudley