

MEMORANDUM

TO: Office

FROM:

RE:

DATE:

Question Presented

Should we oppose the motion made by the prosecution for the forcible administration of anti-psychotic drugs to our client, Mr. Jason Nelson to render him fit for trial, considering medical experts have determined Nelson has a twenty percent chance of being rendered competent after medication and the drugs are proven to have caused side effects?

Short Answer

Yes, we intend to vigorously oppose this motion to administer the antipsychotic drugs without consent, with known drug side effects which include lethargy, confusion and drowsiness and the report from medical experts' findings showing a twenty percent chance of competency to stand



trial after treatment.

Statement of Facts

The defendant, Jason Nelson has been charged with manslaughter. The defendant is a known psychiatric patient and currently admitted at a mental health facility. This condition renders the client unfit to assist in his defense and unable to stand trial. The prosecutor has moved to have the court order forcible medication of our client, Nelson with antipsychotic drugs against his will with the aim of making him able to stand trial and sentencing. The defendant, Nelson, strongly refuses medication due to the debilitating side effects he has experienced on the drugs which are confusion, lethargy and drowsiness. Examination of our client by medical experts reveals that he has a twenty percent probability of competency and fitness to stand trial after the said drug administration. The client has never been a danger to himself or others. The defense attorneys propose to oppose this motion.

Discussion

The Court charged our client with manslaughter, a lesser charge due to the evidence provided to support the diminished mental capacity of the defendant during the commission of the crime. According to section 267 of the Mental Health Act requires the Mental Health Court to determine whether the defendant was of unsound mind during the commission of the

crime. Section 304A of the Criminal Code states that when during the commission of the crime that caused death, the defendant had an abnormality of mind severe enough to impair his capacity to understand what he was doing, to control his actions and stop himself and this person should therefore only be charged with manslaughter.

It must be proven by the state and the prosecutor that the defendant is unable to stand trial. A person's incompetency to stand trial is determined using a number of criteria referred to as the Presser criteria. These criteria are whether the person has the ability to sufficiently consult and instruct his/ her lawyer, ability to understand the charges brought against him/ her and their possible consequences and ability to plead to the charges and a clear understanding of what a guilty plea means. The defendant should also have a rational and factual understanding of the court proceedings and the ability to follow these proceedings and an awareness of the prosecution's evidence and its implications and the key participants in the court proceedings. The defendant should also have the ability to make a defense and answer to the charges either through his/her lawyer or responding to questions in the witness box during cross-examination. The competency to stand trial also encompasses the possibility of serious and adverse consequences to the defendant, the proof that the mental health of the patient will deteriorate over the time course of the trial. Section 571.003, Health and Safety Code, Article 46B.003, *Dusky vs United States*, 561 N.E.2d 57(III 1960), created that the standard of competency was that the defendant has to have "sufficient ability to consult with and instruct his/her attorney with a degree of factual and rational understanding of the court proceedings against them". Our client was found to be incompetent to stand trial under Chapter 46B.

The Iowa Code, Chapter 812.3- Mental Incompetency of the Accused, 1999

states that if at any stage within the court proceedings, the defendant shows and signs that he/she is suffering from a mental disorder which appears to prevent the defendant from understanding the charges, the proceedings and the evidence provided. It stipulates that further proceedings must be stopped and a hearing had upon that matter. The defense may use this statute to illustrate the incompetency of the defendant to stand trial.

The Second schedule of the Mental Health Act has essentially adopted the Presser test, which was first outlined in the R v. Presser VR45, 1985. The case R. v. AAM: ex parte AG Queensland QCA 305, 2010, the Court of Appeal found that the appellant was unfit to stand trial during her sentencing by the Magistrate's Court. This led the court to revisit several convictions on the same grounds.

The involuntary commitment of a mental health patient in most states is provided for by the court if the patient is considered mentally ill or a danger to self and others. The defendant was admitted involuntarily due to his inability to take care of himself. This is referred to as 'gravely disabled'. With respect to this gravely disabled concept, see *O'Connor vs. Donaldson*, 422 U.S. 563, 575-76(1975), The Supreme Court suggested that the inability of the defendant to take care of oneself cannot be considered as sufficient grounds for dangerousness unless the survival of the defendant is at stake, "the State cannot continue to hold an individual who is not dangerous and capable of surviving in freedom by themselves or with the help of others". In *Waterhorn v. Alaska Psychiatry Institute*, 156 P.3d 371(Alaska 2007), the Supreme Court of Alaska under the Alaska's Constitution in validating the statute that authorizes involuntary commitment of the gravely disabled so as to avoid the substantial deterioration of the defendants previous ability to function solely and independently. The court used the concept of grave

disability to have the defendant admitted into the mental health facility.

Chapter 7, part 2 of the Mental Health Act (2000) allows for the treatment of mental illness without consent under the Involuntary Treatment Order. This forensic order should be preceded by involuntary assessment of the defendant. The treatment criteria under this Act include the proof that the person has a mental illness which requires immediate treatment, the treatment recommended is available at mental health facility, and the person's illness may continue to deteriorate and there is proven imminent risk to self and others. The prosecution must prove there is no less forceful way of ensuring the defendant will receive treatment and the person has unreasonably refused the proposed treatment and/or lacks the capacity to consent. With respect to this stipulation, our client does not fall under the criteria for involuntary treatment. Nelson has reasonable and proven reasons to refuse treatment based on the adverse side effects he suffers from the drugs. Moreover, the defendant is not a threat to his safety or the safety of others. These are sound grounds for the vigorous opposition of the prosecutor's motion for involuntary forced treatment.

With respect to the motion for forced medication, the defense will refer to Supreme Court decisions in various cases. These include *Youngberg v. Rome*, 102 S.Ct. 2452, U.S.Pa., (1982), *Rennie v. Klein*, 102 S.Ct. 3506(Mem), U.S., 1982 and *Mills v. Rogers*, 102 S.Ct.2442 (1982). These cases are interpreted as the federal constitution views on the defendant's rights to refuse anti-psychotic medications and is under the "Professional judgment standard". The federal protection from forced medication is limited to whether the treatment is falls under a substantial deviation from the accepted professional judgment, standards and practices. Under this standard, the defense can argue that the forced medication of a patient would be invalid with respect to the professional judgment. The medical

expert witnesses report that the effects of the defendant's medication will be minimal and do not guarantee the competency of the defendant to stand trial. This may be used to argue that forced treatment would be pointless due to the fact that the improvements are not certain. Moreover, the presence of debilitating side effects from the medication is grounds for the defense to move for the court's dismissal of the prosecution's motion. This does not fall under the concept of Professional judgment in that the administration of drugs despite the presence of side effects is not accepted or proper exercise by psychiatrists. The defense must consider the different types of antipsychotics that may be administered to the defendant as treatment for his condition and the side effect profile of each and if it is possible to alleviate or completely eliminated these effects in the defendant's treatment. The attorney's should obtain a report on this and the documented medications already administered to the defendant. This information may be used as grounds for dismissal of the motion or the filing of a motion by the defense team for reevaluation of the defendant's condition by medical expert witnesses.

The defense may argue that the involuntary treatment may cause more damage than good to the patient and that it may increase the risk of the defendant causing injury to self and others. The defense may also argue that the severe consequences of the psychiatric treatment may lead to further deterioration of the patient with respect to instances of misdiagnosis, adverse side effects and psychiatric assault. The defense may also argue for the denial of the prosecutor's motion on the grounds of human rights violation.

The defendant and his family members oppose this motion from the point of view that most psychiatrists will give false statements on the stand as a tactic facilitated by judges and corrupt psychiatric professionals. It is

therefore implied that courts accept dishonest testimonials from expert witnesses especially those who show a high propensity to distort their statements for their own personal gains. The defense may also cite involuntary treatment on the grounds of its potential for abuse. Treatment may be abused by the psychiatrists who abuse the power they possess in these mental health institutions which may result in assault or even torture of the defendant.

In *Sell v. United States*, 539 U.S. 166, 123 S.Ct. 2174 (2003), the Supreme Court set up constitutional guidelines for the application of Professional Judgment. These are, the fact that the court must find that important governmental interests are at stake, the court must prove that involuntary medication will significantly further and improve the government's interests; the court must also find that less intrusive, alternative treatments may receive the same results and the court must conclude that the administration of drugs is medically appropriate. As the defense attorney's, the objection of the motion may be done with respect to the client's best interests. If the defendant is not under the Order for Involuntary Treatment, he does not fall under the Mental Health Act. This should be considered as it may affect the defense of abnormality of mind at the time of the commission of the crime. If exempted from the forensic order for involuntary treatment, the defendant will have to submit an expert report on his mental status at the time of the crime and at present, under s 258. If the Mental Health Court finds our client permanently unfit for trial with or without involuntary treatment, the court proceedings will be discontinued and notices sent to the defendant, the defense attorney, and the chief prosecutor, the director of mental Health and the director of public prosecutions and the Attorney General. This may lead to the issue of a forensic order with permanent detention of the defendant at an authorized mental health institution. If the Mental Health court finds the defendant

temporarily unfit to stand trial, the court proceedings are suspended and the court issues a forensic order sending the defendant for treatment. While at the facility, the Mental Health Review Tribunal will continually assess the defendant to determine when he will be fit to resume the trial. The defense may use these stipulations to argue that the detainment of the client may be extended and prolonged in this case. The defendant may argue that this will lead to the prolongation of a sentence and it may be viewed as discrimination and rights violations.

Under the Mental Health Act, there are three documents necessary to detain a defendant in a recommended mental health facility; these include the recommendation for assessment s50, the agreement for assessment by the institution's administrator s53 and the court assessment order s58 and ss64-66 if the patient or defendant is already in custody. Once these documents are processed, the defendant becomes a classified patient. The defense should advise the family members on the procedures to obtain bail for the defendant if this should happen. The defense should obtain a letter from the patient's psychiatrist to document the current mental status of the patient and the defendant's potential to adapt to the community and the follow up requirements. The doctor should also evaluate the threat the defendant poses to himself and others.

Another point for the consideration of the defense team before opposition of the motion is that the mental health facility may offer and allow bail for a patient on forensic order for involuntary treatment. The doctor in charge has the authority to change the Involuntary Treatment Order from inpatient to outpatient community treatment with certain follow up requirements.

Conclusion

The defendant, Nelson has been found by the court to be incompetent to proceed. This means that he is unable to sufficiently consult with his defense attorneys and with a reasonable degree of rational and factual understanding of the criminal proceedings, evidences presented against him. The defendant is not capable of this as a result of the mental disability he suffers from. The charge against the defendant was lessened from murder to manslaughter as the evidence presented to the court by the defense attorneys shows proof that the defendant was of unsound mind at the time of the commission of the crime. Therefore, the concept of diminished responsibility applies and the charges against the defendant reduced in order to reduce the sentence of the defendant under the Mental Health Act.

The prosecution in the case against our client, Jason Nelson, a mental health patient charged with manslaughter, moves for a motion for a forensic court order to hold and start treatment on the defendant without consent. The defense seeks to strongly oppose this motion with the interest of the defendant on the grounds that the defendant poses no threat to self or community and due to the reasonable refusal of treatment on the grounds of debilitating side effects.