

Sell v. United States

United States Supreme Court

539 U.S. 166 (2003)

Question:

Is Due Process violated by involuntarily administering antipsychotic medication to render a criminal defendant competent to stand trial?

Facts:

In 1997 dentist Charles Sell was charged with 56 counts of mail fraud, six counts of Medicaid fraud, and one count of money laundering. Sell had a chronic mental illness with delusions and hallucinations. In early 1998 Sell allegedly intimidated a witness and was additionally charged with attempting to murder the arresting FBI agent and a former employee who planned to testify against him in the fraud case.

After an inpatient evaluation at the United States Medical Center for Federal Prisoners, a federal magistrate found Sell incompetent to stand trial. Upon Sell's refusal of antipsychotic medication the medical center staff sought authorization for involuntary treatment.

Five administrative or judicial bodies reviewed the issue of Sell's involuntary treatment. First, a reviewing psychiatrist authorized involuntary treatment with antipsychotic medication because Sell was mentally ill, dangerous, and medication was necessary to treat his illness and restore him to competence. Second, a Bureau of Prisons official authorized involuntary treatment because Sell was dangerous, would benefit from medication, and other less restrictive interventions were unlikely to ameliorate Sell's symptoms.

Third, a federal magistrate authorized involuntary treatment because antipsychotic medication was the only way to render Sell less dangerous, the benefits of antipsychotic medications outweighed the risks, and involuntary medications would produce a substantial probability that Sell would be restored to competency to stand trial.

Fourth, the federal District Court affirmed Sell's involuntary treatment, holding that antipsychotic medication was medically appropriate and necessary to serve the government's compelling interest in restoring Sell to competency and bring him to trial. The District Court found, in contrast to the earlier magistrate's decision, that Sell was not dangerous. The District Court found it premature to address whether the effects of medications would prejudice Sell's defense at trial.

Fifth, the Eighth Circuit Court of Appeals affirmed the District Court's judgment, concluding that the "government has an essential interest in bringing a defendant to trial" and that no less intrusive means to restore Sell to competence existed. Focusing solely on

the fraud charges, the Eighth Circuit found the medication medically appropriate and would provide a reasonable probability that Sell would be able to participate in his trial.

Holding:

In a 6-3 decision, the United States Supreme Court held that Due Process allows for forced antipsychotic medications solely to restore competence to stand trial, but only under narrow circumstances. The judgment of the Eight Circuit Court of Appeals was vacated, and the case was remanded for further proceedings in consideration of this opinion.

Rationale:

Justice Breyer authored this decision that weighed heavily on the two earlier United States Supreme Court cases *Washington v. Harper* (1990) and *Riggins v. Nevada* (1991).

In both *Harper* and *Riggins*, the Court recognized a constitutionally-protected liberty interest in avoiding involuntary antipsychotic medication. The *Harper* Court found that Due Process permitted the state to involuntarily treat a mentally ill prison inmate if the inmate was dangerous and the treatment was in the inmate's medical interest. The *Harper* Court found that involuntary treatment was a constitutionally permissible "accommodation between an inmate's liberty interest in avoiding the forced administration of antipsychotic drugs and the State's interests in providing appropriate medical treatment to reduce the danger that an inmate suffering from a serious mental disorder represents to himself or others."

In *Riggins*, the Court found that only an essential or overriding state interest, such as competency restoration, may overcome the defendant's liberty interest to avoid forced medication. Riggins received Mellaril involuntarily during trial, was convicted and in a post-conviction appeal argued that the forced Mellaril was unconstitutional. Because the trial court had permitted forced medication of Riggins without taking into account his liberty interest, with a consequent possibility of trial prejudice, the US Supreme Court reversed Riggins' conviction and remanded for further proceedings.

In summary, *Harper* and *Riggins* indicate that the Constitution permits the Government involuntarily to administer antipsychotic drugs to a mentally ill defendant facing serious criminal charges in order to render that defendant competent to stand trial, but only if the treatment is medically appropriate, substantially unlikely to have side effects that may undermine the fairness of the trial, and, taking account of less intrusive alternatives, is necessary significantly to further important governmental trial-related issues.

The *Sell* Court further interpreted this issue, saying that this standard will permit involuntary treatment solely for trial competence purposes in only certain, rare instances. The following conditions must be present for a court to order forced antipsychotic medications solely to restore competence to stand trial:

1. The court must find that *important* governmental interests are at stake. The government's interest in bringing to trial a defendant charged with a serious crime is important, whether the person is charged with a serious crime against a person or serious crime against property. In trying these defendants the Government seeks to protect the public through application of the criminal law. Courts, however, must consider the facts of an individual case in evaluating the Government's interest in prosecution. Special circumstances may lessen the importance of that interest – for example, a defendant who is refusing medication may experience lengthy confinement in a psychiatric institution, which may reduce risk to the public. However, civil commitment is not a substitute for criminal trial. The government has a substantial interest in timely prosecution – it may be difficult or impossible to try a defendant who regains his competence after years of commitment, in which memories may fade and evidence may be lost. The potential for future confinement affects, but does not totally undermine, the strength of the need for prosecution.
2. The court must conclude that involuntary medication will *significantly further* the important governmental interests and be substantially likely to render the defendant competent to stand trial. At the same time, the court must find that the medications are substantially unlikely to have side effects that will interfere significantly with the defendant's ability to assist counsel in conducting a trial defense, thereby rendering the trial unfair. (The court referenced the antipsychotic medication side effects discussed in *Riggins*, such as whether a particular drug will sedate a defendant, interfere with communication with counsel, prevent rapid reaction to trial developments, or diminish the ability to express emotions.)
3. The court must conclude that involuntary medication is *necessary* to further the important governmental interests. The court must find that no alternative, less intrusive methods are unlikely to substantially achieve the same results. The court must consider less intrusive means for administering the drugs, such as a court order to the defendant backed by contempt power, before considering more intrusive methods.
4. The court must conclude that the administration of the drugs is *medically appropriate* – in the patient's best medical interest in light of his illness.

There are often strong reasons for a court to consider forced medications for reasons other than competency restoration. A court need not consider forced medications for competency restoration if forced medication is warranted for a different purpose, such as individual dangerousness set out in *Harper*, or purposes related to the individual's own interests where refusal to take the drugs puts his health gravely at risk. Consideration of these reasons for involuntary treatment is more objective and manageable than considering forced treatment for competency restoration. Every state provides avenues in which involuntary treatment can be addressed as a civil matter, such as the appointment

of a guardian, or court –ordered medication in the event of dangerousness or lack of capacity to make treatment decisions.

Justice Breyer raised several questions that underscore the rarity of forced treatment for competency restoration in light of the guidelines described above – Why is it medically appropriate to forcibly treat an individual who is non-dangerous and competent to make up his own mind about treatment? Can bringing such an individual to trial be the sole basis to justify administration of a drug that may have adverse side effects, including side effects that may to some extent impair a defense at trial? A court considering involuntary treatment solely for competency restoration should ordinarily determine whether the Government has first sought permission for forced treatment for these other reasons.

With specific regard to *Sell*, the Medical Center and Magistrate authorized involuntary treatment on the basis that *Sell* was dangerous, under a *Harper*-like standard. The Medical Center’s experts conceded that the medications had significant side effects, and in the experts’ “cost-benefit analysis” considered only *Sell*’s dangerousness, not the need to bring him to trial.

However, the District Court and Eighth Circuit Court of Appeals found that *Sell* was not dangerous, and ordered involuntary treatment solely on the basis of the government’s compelling interest in bringing *Sell* to trial. The United States Supreme Court found that the Court of Appeals erred in ordering involuntary treatment solely to render *Sell* competent to stand trial, because other issues outlined in this opinion were not considered, such as trial-related medication side effects and risks of medication that would have helped determine whether forced medication was warranted on trial competence grounds alone.

Commentary:

- Both *Harper* and *Riggins* are more than ten years old, prior to the emergence of atypical antipsychotic medications that have a lower risk to produce side effects that might interfere with trial competency.
- What role do medical experts play in offering opinions on the criteria set forth in the *Sell* decision? While it is clear that psychiatrists are qualified to offer opinions on criteria two, three and four, at first blush one would think that psychiatrists have no business offering an opinion on whether the government has a compelling interest in restoring a defendant’s competency in order to bring him to trial. However, Justice Breyer specifically noted that the medical experts at the Medical Center erred by not considering whether the government had a need to bring *Sell* to trial.
- The dangerousness criteria for forced medication set forth in *Harper* and expounded on in *Sell* refer to the danger an institutionalized mentally ill prisoner presents to other patients and staff, not just dangerousness in general. Is it now viable to ask a court for forced medications for a criminal defendant solely on the institutional danger issue, regardless of both the defendant’s capacity and the government’s interest in bringing him to trial?

- Interestingly enough, the American Psychological Association submitted a brief opining that nondrug therapies may be effective in restoring trial competence, in conflict with the American Psychiatric Association’s brief opining that alternative treatments for psychosis are not commonly as effective as medication to restore competence.
- *Steele v. Hamilton County* and SB 122 do not appear to conflict with the *Sell* decision.

Additional Teaching Points:

The law normally requires a defendant to wait until the end of his trial to obtain appellate review of a pretrial order. In *Sell*, the Magistrates’ order for Sell to receive involuntary medication would normally not be appealable until after trial. However, the law provides for exceptions to this rule. A preliminary or interim decision is appealable as a “collateral order” when it (1) conclusively determines the disputed question, (2) resolves an important issue completely separate from the merits of the action, and (3) is effectively unreviewable on appeal from a final judgment.

The Court held that it was proper to review this matter at the pretrial phase, because all of the above conditions had been met. Specifically, if Sell were to receive the involuntarily-administered antipsychotic medication, this harm could not be undone even if Sell was later acquitted. These considerations, particularly those involving the severity of the intrusion and corresponding import of the constitutional issue, are grounds for interlocutory appeal.

Dissent:

Justice Scalia authored the dissent, on the grounds that interlocutory appeal was inappropriate and allowed criminal defendants to engage in “opportunistic behavior” by stopping their antipsychotic medications halfway through a trial and then demanding interlocutory appeal of any forced medication order that may be ordered.

Summary prepared by Stephen Noffsinger, M.D.