

FORCED MEDICATION AND COMPETENCE TO BE EXECUTED

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I. FORCED MEDICATION IN GENERAL

Sell v. United States,
539 U.S. 166, 123 S.Ct. 2174 (2003)

Non-capital pre-trial case. A pretrial order affirming a magistrate judge's order requiring a defendant to receive medication involuntarily in order to render the defendant competent to stand trial is immediately appealable as a collateral order. The Fifth Amendment Due Process Clause permits the Government to involuntarily 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 (1) medically appropriate; (2) substantially unlikely to have side effects that may undermine the fairness of the trial; and (3) taking account of less intrusive alternatives, is necessary significantly to further important governmental trial-related interests. This standard permits forced medication solely for trial competence purposes in certain rare instances. If the defendant is not dangerous to himself or others, he cannot be ordered to involuntarily take antipsychotic drugs solely to render him competent to stand trial without consideration of other factors.

Riggins v. Nevada,
504 U.S. 127 (1992)

Capital conviction and death sentence reversed where defendant was forced to take antipsychotic medication without the State first establishing that the medication was necessary and medically appropriate. Prejudice is found despite expert testimony presented at trial that allowed jurors to assess defendant's demeanor fairly, since there remained an unacceptable risk that forced medication compromised his trial rights.

Washington v. Harper,
494 U.S. 210, 110 S.Ct. 1028 (1990)

Due Process Clause permits the State to treat a seriously mentally ill inmate with antipsychotic drugs against his will, if he is dangerous to himself or others and the treatment is in his medical interest. Due Process does not require a judicial hearing before such involuntary treatment, and the state's administrative procedures, including provision for review by administrative panel instead of a judicial decision maker, comported with requirements of procedural due process.

II. FORCED MEDICATION RELATED TO EXECUTION

Singleton v. Norris,
319 F.3d 1018 (8th Cir.) (en banc), cert. denied, 540 U.S. 832 (2003)

State does not violate Eighth Amendment or due process by executing inmate who has regained competency through forced medication that is part of appropriate medical care.

Fearance v. Scott,
56 F.3d 633 (5th Cir. 1995)

The court suggests, but does not decide, that because *Ford* claims pertain to petitioner's immediate mental state, they are not subject to the abuse of the writ doctrine. But petitioner's claim that his constitutional rights were violated by forcible medication to render him fit for execution could have been presented in an earlier petition and was properly dismissed as an abuse of the writ.

III. U.S. District Courts

Kemp v. Cockrell,
2003 WL 21448584 (N.D. Tex. 2003), COA denied, 86 Fed.Appx. 680 (5th Cir. 2004)

Claim that it was unconstitutional to forcibly medicate petitioner in order to render him competent to be executed was procedurally barred where it was raised for the first time in a second state habeas petition which was denied as an abuse of the writ. Given the long history of medicating petitioner, the factual basis for the claim was reasonably available to petitioner at the time he filed his first state habeas petition, which resulted in a finding of incompetence to be executed, and so petitioner could not establish "cause" to overcome the default. Incompetence to be executed claim is dismissed as premature given that execution is not imminent.

IV. State Cases

Commonwealth v. Sam,
952 A.2d 565 (Pa. 2008)

In finding that post-conviction petitioner could be forced to take antipsychotic medication to restore competence, state supreme court made clear it was *not* addressing the issue of whether a death row inmate may be forcibly medicated in order to render him or her competent to be executed.

Singleton v. Norris,
964 S.W.2d 366 (Ark. 1998)

Court grants Singleton's stay application so that a lower court could decide his declaratory

judgment action. Singleton had been involuntarily administered antipsychotic medication after a determination that he was a danger to himself and others under *Washington v. Harper*, 494 U.S. 210 (1990). The court stayed his execution so that the lower court could decide whether the Constitution permits him to be involuntarily medicated, where the forced medication would make him competent for execution.

Note: But see *Singleton v. Norris*, 319 F.3d 1018 (8th Cir.), *cert. denied*, 540 U.S. 832 (2003) (state does not violate Eighth Amendment or due process by executing inmate who has regained competency through forced medication that is part of appropriate medical care.)

***State v. Perry*,
610 So.2d 746 (La. 1992)**

Forced medication for the purpose of restoring competency to be executed violates privacy rights under the state constitution.