

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, :

Plaintiff-Appellant, :

v. : Case No. 2008-2424

THONEX WILLIAMS, : On Appeal from the

: Second Appellate District,

: Montgomery County

Defendant-Appellee. : Case No. 22352

BRIEF OF AMICUS CURIAE
OFFICE OF THE OHIO PUBLIC DEFENDER
IN SUPPORT OF APPELLEE THONEX WILLIAMS

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TABLE OF CONTENTS

	<u>Page No.</u>
TABLE OF AUTHORITIES	i
STATEMENT OF THE CASE AND FACTS	1
INTEREST OF AMICUS CURIAE	1
LAW AND ARGUMENT	2
CONCLUSION	7
CERTIFICATE OF SERVICE	8

TABLE OF AUTHORITIES

Page No.

CASES:

Burton v. Reshetylo (1974), 38 Ohio St.2d 356

Clements v. Fashing (1982), 457 U.S. 9574

Fabrey v. McDonald Vill. Police Dep't (1994), 70 Ohio St.3d 3514

Kennedy v. Mendoza-Martinez (1963), 372 U.S. 144.....2

Romer v. Evans (1996), 517 U.S. 620.....5

Smith v. Doe (2003), 538 U.S. 842

State ex. rel. Vana v. Maple Hts. City Council (1990), 54 Ohio St.3d 914

State v. Cook, 83 Ohio St.3d 404, 1998-Ohio-2912

State v. Sullivan, 90 Ohio St.3d 50, 2001-Ohio-6.....6

United States v. Carolene Products Co. (1938), 304 U.S. 144.....5

United States v. Ward (1980), 448 U.S. 242.....2

Vitek v. Jones (1980), 445 U.S. 480.....3,6,7

STATUTES:

R.C. 2929.146

R.C. 2945.39 *passim*

R.C. 51226

STATEMENT OF THE CASE AND FACTS

Amicus adopts the statement of the case and facts set forth by Appellee Thonex Williams.

INTEREST OF AMICUS CURIAE

The Office of the Ohio Public Defender (“OPD”) is a state agency responsible for providing legal representation and other services to indigent criminal defendants convicted in state court. The primary focus of the OPD is on the appellate phase of criminal cases, including direct appeals and collateral attacks on convictions. The primary mission of the OPD is to protect and ensure the individual rights guaranteed by the state and federal constitutions through exemplary legal representation. In addition, the OPD seeks to promote the proper administration of criminal justice by enhancing the quality of criminal defense representation, educating legal practitioners and the public on important defense issues, and supporting study and research in the criminal justice system.

As *amicus curiae*, the OPD offers the Court the perspective of experienced practitioners who routinely handle significant criminal cases in the Ohio appellate courts. The OPD has an interest in this case insofar as competency to stand trial comes into play in numerous criminal cases. Whether an incompetent defendant can be held indefinitely is not a remote theoretical question, but an issue that deeply affects the lives of mentally ill and mentally retarded defendants. Criminal defendants who are seriously mentally ill and not restorable within one year should be afforded the same protections as mentally ill Ohioans who are civilly committed.

LAW AND ARGUMENT

A. A commitment under R.C. 2945.39 is criminal in nature, and therefore, a criminal defendant committed under the statute must be afforded the same protections as any other criminal defendant.

1. Ohio Revised Code Section 2945.39 is criminal because its effect is punitive.

In *State v. Cook*, 83 Ohio St.3d 404, 1998-Ohio-291, this Court applied the intents-effects test in analyzing sex offender registration and notification laws. Courts must look to the language and purpose of a statute in order to determine legislative intent. *Id.* at 415. This Court articulated the intents-effects test as a two-step inquiry, asking 1) whether the General Assembly expressly or impliedly indicated a civil or criminal intention, and 2) if the General Assembly indicated a civil penalty, is the scheme so punitive in its purpose or effect as to render it criminal. *Id.*, citing *United States v. Ward* (1980), 448 U.S. 242, 248-49.

In order to interpret whether the effect of a statute is punitive, courts can apply relevant factors as guidelines. *Kennedy v. Mendoza-Martinez* (1963), 372 U.S. 144, 168. Those factors include whether the sanction involves an affirmative disability or restraint, whether it has been historically regarded as punishment, whether its operations promote the traditional aims of punishment – retribution and deterrence, whether the behavior to which it applies is already a crime, whether it has an alternative purpose rationally connected to it, and whether it appears excessive in relation to the alternative purpose. *Id.* at 168-69.

In assessing whether something is punitive, courts should look to how the effects of the act are felt by those subjected to it. *Smith v. Doe* (2003), 538 U.S. 84, 99-100. Mentally ill criminal defendants who are not restorable after one year are subject to an affirmative disability or restraint. Those defendants are not released, nor are they turned over to the civil commitment process in an effort to treat their illness. If the court orders continuing jurisdiction under R.C.

2945.39, mentally ill criminal defendants are held up to the maximum term of imprisonment through a criminal process.

Tying the length of commitment to the maximum possible prison term also implicates retribution, one of the traditional aims of punishment. When criminal defendants cannot be tried because of mental illness, R.C. 2945.39 allows the State to punish them by committing them for up to the same length of time for which they would have been imprisoned. While there is always the possibility that the defendants will eventually be restored and then released, the likelihood is a small one in light of the fact that defendants affected by R.C. 2945.39 were not restorable within one year. Moreover, while involuntary commitment to a mental hospital has not historically been a form of punishment, the United States Supreme Court has recognized the serious social stigma attached to such commitment. *Vitek v. Jones* (1980), 445 U.S. 480, 492.

2. Criminal defendants committed under R.C. 2945.39 should be afforded the same rights as other criminal defendants.

Ohio Revised Code Section 2945.39(A)(2) allows the court to retain jurisdiction over a defendant when the court determines that 1) the defendant committed the offense and 2) the defendant is a mentally ill person subject to hospitalization or a mentally retarded person subject to institutionalization. The statute applies a clear-and-convincing standard of proof to the application of criminal jurisdiction. In all other matters of criminal procedure, defendants are afforded the reasonable doubt standard. Ohio Revised Code Section 2945.39 in criminal in its effect because of its punitive character. Criminal defendants who are involuntarily committed should be afforded the same protections as other defendants, such as a reasonable doubt standard of proof.

B. The involuntary commitment of a defendant under R.C. 2945.39 violates his or her right to equal protection under the United States and Ohio Constitutions.

1. There is no rational basis for substantially different commitment procedures.

Ohio Revised Code Section 2945.39 violates criminal defendants' right to equal protection. This Court ruled that, when suspect classes are not involved, the Equal Protection Clause permits class distinctions in legislation if those distinctions bear a rational relationship to a legitimate governmental objective. *State ex. rel. Vana v. Maple Hts. City Council* (1990), 54 Ohio St.3d 91, 92, citing *Clements v. Fashing* (1982), 457 U.S. 957, 963. Likewise, in the absence of a suspect class or fundamental right, "legislative distinctions are invalid only if they bear no relation to the state's goals and no ground can be conceived to justify them." *Fabrey v. McDonald Vill. Police Dep't* (1994), 70 Ohio St.3d 351, 353, citing *Clements*, 457 U.S. at 963.

Here, the State asserts that public safety is a justifiable ground for the unequal treatment meted out by R.C. 2945.39. But there is no correlation between the length of the commitment and public safety. When a criminal defendant is not competent to stand trial within one year and is subsequently subjected to criminal jurisdiction under R.C. 2945.39, that defendant's maximum potential term of commitment is the length of his or her maximum sentence. The hospital's determination of whether someone is competent – and therefore can be released to be tried – is not connected to whether or not that person is dangerous. The inquiry is about the defendant's ability to understand and participate in the proceedings, not dangerousness. Moreover, the maximum prison sentence that a criminal defendant can serve bears no relationship to what will best protect the public. For example, a criminally dangerous defendant could be released after his maximum length of commitment is served, despite his continuing danger to the community. Such a possibility undercuts the State's argument that public safety supports a rational basis for continuing commitment.

2. Ohio Revised Code Section 2945.39 should be reviewed with greater judicial scrutiny.

Rational basis alone is not enough to protect mentally ill criminal defendants. Involuntary criminal committees are a discrete and insular minority; therefore, they should be afforded higher judicial scrutiny. See *Romer v. Evans* (1996), 517 U.S. 620; *United States v. Carolene Products Co.* (1938), 304 U.S. 144, 153, fn. 4. In *Romer*, the United States Supreme Court evaluated legislation aimed at preventing laws and regulations that protect homosexuals. Ultimately, the *Romer* Court applied a rational basis test that went a step further. The Court held that the legislation did not pass rational basis because 1) it imposed a “broad and undifferentiated disability on a single named group,” and 2) “its sheer breadth is so discontinuous with the reasons offered for it that the amendment seems inexplicable by anything but animus toward the class it affects....” *Id.* at 632. The Court intimated the unique need for enhanced rational basis review as far back as 1938, holding that there may be a “narrower scope for operation of the presumption of constitutionality” for legislation that appears facially unconstitutional. *Carolene*, 304 U.S. at 153, fn.4. The *Carolene* Court left open the question of whether some legislation “is to be subjected to more exacting judicial scrutiny.” *Id.*

Here, R.C. 2945.39 is aimed at incompetent criminal defendants. The statute allows for continuing criminal jurisdiction through a clear-and-convincing standard – a lower standard than is applied to other criminal defendants. Criminal defendants, regardless of mental status, should be afforded the same reasonable doubt standard. By applying a lowered standard of proof to involuntary committees and by tying maximum commitment to maximum potential prison time, R.C. 2945.39 raises the specter of legislation that is driven solely by animus towards the class it affects. Therefore, this Court must affirm the court of appeals’ decision and hold that R.C. 2945.39 is an unconstitutional violation of equal protection.

C. The involuntary commitment of a defendant under R.C. 2945.39 violates his or her right to due process under the United States and Ohio Constitutions.

Due process requires that the nature and duration of the commitment have a reasonable relationship to its purpose. *Burton v. Reshetylo* (1974), 38 Ohio St.2d 35. When the treating facility determines that a mentally ill defendant likely will not attain competency to stand trial, that defendant “must be provided the full panoply of civil commitment rights provided in R.C. Chapter 5122.” *Id.* at syllabus. This Court has previously found a commitment statute to be unconstitutional when the treatment period was not related to whether the defendant could attain competency in the foreseeable future. *State v. Sullivan*, 90 Ohio St.3d 50, 2001-Ohio-6.

Here, the duration of the commitment is linked to the defendant’s maximum possible sentence. The purpose of the commitment should be restoration to competency, which is not reasonably related to maximum sentencing under R.C. 2929.14. Once a defendant is not restorable after one year, the indictment should be dismissed. That defendant’s continuing commitment should then become a civil question under R.C. 5122.

In *Vitek v. Jones* (1980), 445 U.S. 480, the United States Supreme Court analyzed laws and procedures for transferring already incarcerated inmates to mental hospitals. Although the facts are distinct, the logic highlights why involuntary commitment for the duration of a maximum prison sentence does not bear a reasonable relationship to the purpose of the commitment – competency. The *Vitek* Court held that states cannot confine a convicted person and then additionally determine that he or she is mentally ill and subject to institutionalization. *Id.* at 493. “Such consequences visited on the prisoner are qualitatively different from the punishment characteristically suffered by a person convicted of crime.” *Id.* Applying that logic to the instant case, involuntary commitment is punishment over and above incarceration. Ohio Revised Code Section 2945.39 violates due process by linking commitment with the maximum

term of imprisonment. *Vitek* held that a convicted felon was entitled to the benefit of appropriate procedures for determining mental status before being transferred. *Id.* Likewise, an indicted defendant must be afforded the same protections under the Due Process Clause.

CONCLUSION

Based upon the foregoing, this Court should affirm the court of appeals' decision and hold that R.C. 2945.39 is criminal in nature and violative of due process and equal protection.

Respectfully submitted,

OFFICE OF THE OHIO PUBLIC DEFENDER

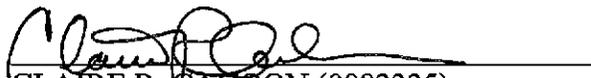

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of this **BRIEF OF AMICUS CURIAE OFFICE OF THE OHIO PUBLIC DEFENDER IN SUPPORT OF APPELLEE THONEX WILLIAMS** has been served upon Carley J. Ingram, Assistant Montgomery County Prosecutor, 301 W. Third Street, Fifth Floor, Dayton, Ohio 45422, and Anthony Comunale, One First National Plaza, 130 W. Second Street, Dayton, Ohio 45402 on this 10th day of August, 2009.


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