

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO

CASE NO. 08-2424

Plaintiff-Appellant,

On Appeal from the
Montgomery County
Court of Appeals,
Second Appellate District

vs.

THONEX WILLIAMS

**COURT OF APPEALS
CASE NO. 22532**

Defendant-Appellee.

APPELLANT'S REPLY BRIEF

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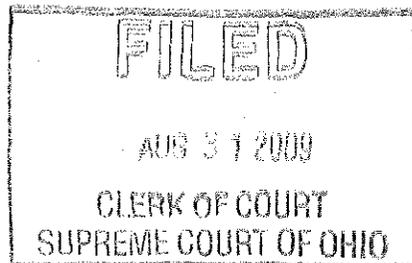


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Reply

The commitment under R.C. 2945.39 of an individual charged with a violent felony whose unrelieved mental illness prevents trial on a pending indictment conforms to the requirements of Due Process and Equal Protection.

A. Due Process permits commitment under R.C. 2945.39 without the full array of rights afforded a defendant in a criminal trial. Based on the premise that the primary purpose of a commitment under R.C. 2945.39 is to punish by confinement those whose continuing mental incompetence prevents conviction on a pending indictment, Appellee Williams and the Court of Appeals have concluded that commitment under the statute violates an individual's right to Due Process because it does not provide the full array of protections given to a defendant in a criminal prosecution. But Williams and the Court of Appeals are mistaken; the purpose of a commitment under R.C. 2945.39 is to protect the public from persons who are mentally ill and dangerous and to treat the person committed, not to make certain the mentally ill do not escape punishment.

How do we know this?

First, because the legislature made the duration of the commitment and its purpose almost perfectly congruent. Under R.C. 2945.401(J), a commitment must end when the first of three events occurs, one of which is that person has improved to the point that he or she is no longer mentally ill and subject to hospitalization under the standards applied in ordinary civil commitments under R.C. 5122.01(B). When the court finds that the person is no longer mentally ill and subject to hospitalization by court order, the court's

jurisdiction ceases, whether or not he is competent.¹ The duration of the commitment could be tied more closely to its purpose only if the statute eliminated the possibility of ordinary civil commitment for those who remain subject to hospitalization under R.C. 5122.01(B) after a period of time equal to the maximum term available for the highest charge in the indictment.

Second, R.C. 2945.39(D)(1) requires the court to order the least restrictive commitment alternative available that is consistent with public safety and the welfare of the defendant, giving preference to protecting public safety. By the terms of the statute itself, the commitment must be tailored to public safety and the welfare of the person committed.

Third, the purpose of the statute cannot be to *confine* mentally ill individuals, as found by the court and argued by Williams, because a commitment under R.C. 2945.39 does not necessarily result in confinement, and those committed generally have more freedom and rights than prison inmates. Although Williams and the court of appeals use “confinement” interchangeably with “commitment,” the words are not synonymous, and the person committed is entitled to have the conditions of the commitment reviewed by the court and changed when his condition warrants it.

Williams’ reliance on language from *State v. Sullivan* 90 Ohio St.3d 502, 2001-Ohio-6245, 902 N.E.2d 1042, and *State v. Upshaw*, 110 Ohio St.3d 189, 2006-Ohio-4253, 852 N.E. 2d 711, to support the theory that competence proceedings exist to serve

¹ The court of appeals is wrong in stating in ¶ 79 that a commitment under R.C. 2945.39 requires continuing attempts at restoration of competence. There is no such requirement.

the underlying criminal case do not advance his cause. Those cases involved treatment meant to restore competence under R.C. 2945.38, where the goal was to hold a trial on a pending indictment. The cases say nothing about the purpose of a commitment under R.C. 2945.39 of one who is incompetent and not restorable.

B. Due Process permits commitment under R.C. 2945.38, 2945.39, and 2945.401, of those who are mentally ill and subject to hospitalization by court order and who have been shown, by clear and convincing evidence, to have committed a violent felony. In *Jackson v. Indiana*, (1962), 406 U.S. 715, 92 S.Ct. 1845, the Court held that a person charged by a state with a criminal offense who is committed **solely** on account of his incapacity to proceed to trial cannot be held more than the reasonable period of time necessary to determine whether there is a substantial probability that he will attain that capacity in the foreseeable future. But when the trial court retains jurisdiction over an individual R.C. 2945.39, the person is not committed *solely* on account of his incapacity to proceed to trial; it is because the person is mentally ill and subject to hospitalization by court order under R.C. 5122.01(B), **and** the court has found by clear and convincing evidence that he had committed a qualifying violent felony.

To suggest that Due Process requires that one who cannot be tried on a pending indictment must be either released or committed under ordinary civil commitment procedures is to ignore the decisions in cases such as *Addington v. Texas* (1978), 441 U.S. 418, 99 S.Ct. 1804 and *Kansas v. Hendricks* (1997), 521 U.S. 346, 117 S.Ct. 2072, that recognize the State's legitimate interest in restraining the dangerously mentally ill. The United States Supreme Court has consistently upheld involuntary commitment

statutes that detain people who are unable to control their behavior and thereby pose a danger to the public health and safety, provided the confinement takes place pursuant to proper procedures and evidentiary standards. *Kansas v. Hendricks*, supra at 357, 2080, citing *Foucha v. Louisiana* (1992), 504 U.S. 71, 80, 112 S.Ct. 1780. And the Court has consistently sustained civil commitment statutes when they require proof of dangerousness and proof of mental illness or “mental abnormality.” *Kansas v. Hendricks*, supra, at 358, 2080. With proper procedural safeguards in place, a State does not violate due process by enacting statutes providing for the involuntarily confinement of those whose mental illness causes them to present a risk of harm to others.

C. Commitment under R.C. 2945.39 does not violate Equal Protection. The Equal Protection Clause guarantees that persons who are similarly situated will be treated similarly. *State Ward* (1999), 130 Ohio App.3d 551, 720 N.E.2d 603. Involuntary commitment under R.C. 2945.39 is available to commit those who are subject to hospitalization by court order under R.C. Chapter 5122 and whose illness has manifested itself in the commission of a violent felony. They are mentally ill and dangerous, and they are not similarly situated to those who are involuntarily committed under R.C. Chapter 5122.

In *Jackson v. Indiana*, (1972), 406 U.S. 715, 92 S.Ct. 1845, the Supreme Court held the mere filing of criminal charges against a person cannot justify providing that person with fewer procedural and substantive protections against indefinite commitment than the protections generally available to all others facing an involuntary commitment. That holding does not compel the State to overlook the danger presented by one who is

mentally ill and subject to hospitalization by court order and who has been shown, by clear and convincing evidence, to have committed a violent felony. To suggest otherwise requires one to misread *Jackson v. Indiana*, supra, and overlook the law set out in cases such as *Addington v. Texas*, supra, and *Kansas v. Hendricks*, supra. And any differences in the manner in which those committed under R.C. 2945.39 are discharged or the conditions of the commitment are changed are justified by the State's interest in adding an additional layer of protection in restraining those who are not only mentally ill and subject to hospitalization, but who have also committed a serious crime. Cf. *Heller v. Doe* (1993), 509 U.S. 312, 321, 113 S.Ct. 2637, 125 L.Ed.2d 257.

Conclusion

The judgment of the Court of Appeals should be reversed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Appellant's Reply Brief was sent by first class on this 31st day of August, 2009, to Opposing Counsel: Anthony Comunale, One First National Plaza, 130 W. Second Street, Suite 2050, Dayton, OH 45402-1504 and Claire R. Cahoon, Assistant State Public Defender, Office of the Ohio Public Defender, 250 East Broad Street, Suite 1400, Columbus, OH 43215.

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