

NO. 70712-4-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

IVAN BARASHKOFF,

Appellant.

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2014 FEB 27 AM 9:28

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE JUDGE JAMES ROGERS

BRIEF OF RESPONDENT

DANIEL T. SATTERBERG
King County Prosecuting Attorney

REBECCA VASQUEZ
Deputy Prosecuting Attorney
Attorneys for Respondent

W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000

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¹ Sell v. United States, 539 U.S. 166, 180-181, 123 S. Ct. 2174, 156 L. Ed. 2d 197 (2003.)

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A. ISSUE PRESENTED.

When the State has satisfied each of the criteria permitting involuntary medication for the purpose of competency restoration, should appellant counsel be permitted to withdraw as there are no non-frivolous issues to address?

B. STATEMENT OF THE CASE.

The State charged Ivan Barashkoff with two counts of felony harassment for an incident on January 14, 2013. CP 1-27. Ivan Barashkoff is charged with threatening to cause bodily injury to the staff and children at the Phinney Ridge Lutheran Church. The charge includes an allegation of threatening to kill the staff and children, allegations that Ms. Christina Bogar was placed in reasonable fear that the threats would be carried out, and an allegation that Ivan Barashkoff has a prior conviction for Residential Burglary against a person specifically named in a no-contact order. CP 1-5.

Ivan Barashkoff was found incompetent to stand trial and committed to Western State Hospital for Competency Restoration. The initial Western State Hospital Report

opined that involuntary medication was necessary to render the defendant competent. CP 235-236. The State moved for an involuntary medication order, and the court held a hearing on July 23, 2013. RP 2.

Dr. Nitink Karnik testified on behalf of the State in the motion for involuntary medications. Dr. Karnik was the defendant's treating psychiatrist during the most recent inpatient admission, which began on March 18, 2013. RP 8. Dr. Karnik based his testimony on in-person evaluation as well as records review. RP 9, 27. He opined that Barashkoff suffered from mood and thought disorders, with symptoms that included disorganization, paranoid and grandiose delusions, and an inability to carry on meaningful conversations with another person. RP 9-16. He opined that Barashkoff was incapable of understanding the legal proceedings against him and participating in his defense. RP 16.

Dr. Karnik testified that there was a substantial likelihood that a mood stabilizing anti-psychotic medication would treat his symptoms of mental illness. RP 56. Dr. Karnik recommended treatment through an injectable anti-

psychotic medication. RP 17. He opined that there was no less restrictive intrusive alternative to medication, and that an appropriate dose would not interfere with Barashkoff's ability to assist in his defense. RP 25-26. Dr. Karnik testified as to how side effects are monitored and managed. RP 17-23. Dr. Karnik testified that involuntary medication was in the defendant's best medical interest, in order to prevent the brain damage that can be caused by not taking medication. RP 24-25.

C. ARGUMENT.

1. THIS COURT SHOULD PERMIT COUNSEL TO WITHDRAW BECAUSE THERE ARE NO NON-FRIVOLOUS ISSUES TO BE RAISED

RAP 15.2(i) provides, "If counsel can find no basis for a good faith argument on review, counsel should file a motion in the appellate court to withdraw as counsel for the indigent as provided in rule 18.3(a)." RAP 18.3(a)(2) provides, in relevant part, "The motion shall identify the issues that could be argued if they had merit and, without argument, include references to the record and citations of authority relevant to the issues." That procedure has been invoked in this case.

Counsel for the State has reviewed the prosecutor's file, the appellant's brief, the court file, and the transcripts in this case. Counsel for the State was the prosecutor in the hearing on July 23, 2013. The potential issues set forth in appellant's brief, as discussed below, demonstrate the lack of merit of these issues under the facts of the case.

Accordingly, the State concurs in appellate counsel's motion to withdraw and requests dismissal of the appeal.

2. THE TRIAL COURT PROPERLY FOUND THAT THE STATE SATISFIED EACH OF THE SELL² CRITERIA PERMITTING INVOLUNTARY MEDICATION

A defendant may be medicated against his or her will in order to attain competency. State v. Lover, 41 Wn.App. 685 (1985); State v. Adams, 77 Wn. App. 50 (I-1995). The Court in Sell v. United States, 123 S.Ct. 2174, 539 U.S. 166 (2003), set out a four part test for determining when a court should order forced medications. Specifically, Sell requires that a court consider the following four factors: (1) whether important governmental interests are at stake, including the interest in bringing a defendant to trial for a serious offense

² Sell v. United States, 539 U.S. 166, 180-181, 123 S. Ct. 2174, 156 L. Ed. 2d 197 (2003.)

and the interest in having a fair trial; (2) whether involuntarily medicating the defendant is substantially likely to render the defendant competent without interfering with his ability to assist counsel; (3) whether involuntarily medicating the defendant is necessary to further the government's interests; and (4) whether the administration of drugs is medically appropriate. Sell, 539 U.S. at 180-82. Sell provides the correct analytical framework for determining whether a defendant can be administered medications against his will in order to restore competency to stand trial. State v. Hernandez-Ramirez, 129 Wn. App. 504, 119 P.3d 880 (2005). A court may also authorize forced medication when the defendant poses a danger to himself or others. Hernandez-Ramirez, 129 Wn. App. at 510. The court's order should be affirmed if it is supported by clear, cogent and convincing evidence. Id. at 511.

First, the court must find that important governmental interests are at stake. Bringing a defendant to trial for a "serious offense" has been found to be an important government interest. These crimes may be against a person or against property, and in both instances, the government is

seeking to protect "the basic human need for security" through application of the criminal law. Sell, 539 U.S. at 180. The court must also consider the facts of the individual case when evaluating the government's interest in prosecution. Id.

RCW 10.77.092 provides a statutory definition of "serious offenses" for the purposes of involuntary medication during competency restoration. That list includes all crimes of harassment defined under RCW 9A.46. See RCW 10.77.092(1)(e). Felony Harassment is a crime of harassment under RCW 9A.46.060. RCW 10.77.092(2) also sets out a list of criteria for determining whether particular crime not defined under RCW 10.77.092(1) as serious offenses nevertheless qualify as serious offenses.

Ivan Barashkoff is charged with a crime of harassment, which is statutorily defined as a serious offense for the purposes of involuntary medication. In addition, in evaluating the government's interest in prosecuting this offense, to determine that there are important government interests at stake, the court should consider the facts of this offense. The defendant is alleged to have made specific

threats to harm children and staff at a church. Based on his criminal history, he faces a potential sentencing range of 22-29 months if convicted of both counts, plus the possibility of a 5 year no-contact order with the victims. There are therefore important governmental interests in prosecuting him. The facts of this case should be contrasted with crimes such as a VUCSA Possession, Possession of Stolen Property, and many other less serious crimes.

Second, the court must find that involuntary medication will significantly further the State's concomitant interests, that the administration of drugs is likely to render the defendant competent and that the medication is unlikely to have side effects that interfere with a defendant's ability to assist counsel. Dr. Karnik's testimony clearly established that the defendant's mental condition could only be treated with psychotropic medications and these medications would not interfere with the defendant's ability to effectively communicate with his counsel or apply any information he has previously acquired.

Third, the court must conclude that involuntary medication is necessary to further those interests and that

no alternative, less intrusive treatment could achieve the same results. Dr. Karnik's testimony established that the use of psychotropic medications is the only way to effectively treat the defendant's condition and there is not less intrusive treatment available.

Finally, the court must find that the administration of drugs is medically appropriate and in the defendant's best medical interest in light of the condition. The appellant focuses on the potential long term side effects of medications and of potentially discontinuing medication. However, Dr. Karnik explained clearly how side effects could be managed, and why involuntary medication was the appropriate course of treatment for this defendant.

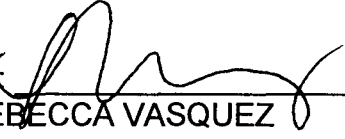
D. CONCLUSION.

Appellate counsel should be permitted to withdraw as there are no non-frivolous issues to address. The State properly satisfied each of the four criteria for involuntary medication in this case. Respondent respectfully requests that the Court dismiss this appeal.

DATED this 26th day of February, 2014.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 
REBECCA VASQUEZ
Deputy Prosecuting Attorney
Attorney for Respondent

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Jennifer Winkler, the attorney for the Appellant at 1908 E. Madison St., Seattle, WA 98122 containing a copy of the Brief of Respondent, in State of Washington v. Ivan Barashkoff, Cause No. 70712-4-I, in the Court of Appeals , for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Jill Carter

Name: Jill Carter
Done in Seattle, Washington

2-26-14

Date

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