

No. **21-5855**

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
AUG 30 2021
OFFICE OF THE CLERK
SUPREME COURT, U.S.

ORIGINAL

Jeremy K. Blaber — PETITIONER
(Your Name)

vs.

State of Oregon — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Oregon State Supreme court
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jeremy K. Blaber
(Your Name)

2600 Center St
(Address)

Salem, OR 97301
(City, State, Zip Code)

503-947-2491
(Phone Number)

I am respectfully asking the court to consider the following three questions:

1. Can the court medicate a defendant *against the opinion of the defendant's treating physician* under a "Sell order" (Sell vs. United States) for the sole purpose of restoring a defendant's fitness to stand trial?
2. Has the court proven the Medical Appropriateness Standard in light of the treating physician's opinion on record that:
 - a.) The defendant does not have a qualifying mental health disorder, and
 - b.) Medication is unlikely to have any effect on defendant's fitness to stand trial
3. Did the court err in its reliance on a study that the prosecution's witness called "anecdotal" to meet the Individual Standard of clear and convincing evidence, and was the decision sufficient to overcome the defendant's interest in refusing it?

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[X] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

1. Multnomah Circuit Court, Hon. Nan G. Waller
1021 SW 4th Avenue, Portland OR 97204
2. Oregon Attorney General, Att Ben Gutman
1162 Court Street NE, Salem OR 97301
3. Multnomah County District Attorney, ADA Marrero
1021 SW 4th Ave Ste 600
Portland OR 97204
4. Oregon State Hospital
Attn: Dolores Mattuchi
2600 Center St NE
Salem, OR 97301

RELATED CASES

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TABLE OF AUTHORITIES CITED

CASES

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Lopes 322 P.3d at 529 (citing United States v. Ruiz-^{PG 8.}
Gaxiola, 623 F.3d 684, 700) (9th Cir.2010) and
United States v. Bush, 585 F.3d 806, 816-17 (4th Cir 2009)
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STATUTES AND RULES

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OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix C to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the State of Oregon Circuit court appears at Appendix B to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was 6/24/2021.
A copy of that decision appears at Appendix C.

☒ A timely petition for rehearing was thereafter denied on the following date: 7/21/2021, and a copy of the order denying rehearing appears at Appendix D.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

ORS. 161. 370

(Determination of fitness to proceed)
When people are accused of a crime, and unable to participate in their trial because of the severity of their mental illness, the court will issue an order under ORS 161. 370 to be sent for mental health treatment, until they are well enough to aid and assist their own defense.

ORS 161. 372

1. If at any point it is determined by the Superintendent of Oregon State Hospital that medication is the recommended treatment in order to allow the defendant to gain or regain fitness to proceed, the defendant is refusing to take the recommended medication, and the defendant cannot be involuntarily medicated without a court order, the Superintendent shall issue a report of the determination to the court.

2. (c) the report should include the likelihood that the medication will gain or regain fitness
3(i) substantially likely that medication will render defendant fit to proceed.

Mr. Blaber was arrested on 5/18/2019 on an Assault II charge which is a class B Felony. Mr. Blaber was also charged with additional lesser felonies and misdemeanors stemming from 5/18/19 arrest.

On 7/2/2019 Mr. Blaber was found unable to aid and assist his attorney and sent to Oregon State Hospital under an ORS 161.370 order for the purpose of competency restoration, where he has been for the last 25 months.

In August of 2020 the state asked the court to decide whether or not Mr. Blaber had a mental health disorder after an opinion by his treating psychiatrist, Dr. Les Christenson, who opined that he did not feel Mr. Blaber had a mental health disorder and expressed ethical concerns about prescribing medication. After Dr. Christenson testified to same, the court heard from forensic psychologist, Dr. Ingram, that she felt Mr. Blaber did have a qualifying mental health disorder and that he would not be "able" in the foreseeable future without the administration of psychotropic medications. It should be noted Dr. Ingram is not a prescriber.

The court found Mr. Blaber did have a mental health disorder (delusional disorder) and proceeded with a Sell hearing requested by the state under ORS 161.372.

Under ORS 161.372 a medication list is required to be provided by the Superintendent, if it is determined that medication is the best way to proceed.

The report is to include benefits and side effects as well as it's likelihood to gain or regain fitness ORS P2 Section A-c

Dr. Christianson returned a letter to the court (Appendix E) that read in part:

"It is the opinion of the defendant's treating physician that an order for involuntary medications would not have a substantial likelihood to allow the defendant to gain or regain fitness to proceed, and therefore pursuant to ORS 161.372 an involuntary medication report will not be filled."

The state called Dr. Ferris to testify about a list of medications he felt were substantially likely to render Mr. Blaber competent for treating his "delusional disorder." Dr. Ferris subsequently sent a medication report to the court finding it substantially likely medications would render Mr. Blaber competent in accordance with ORS 161.372.

However, Dr. Ferris had NEVER met Mr. Blaber, so Dr. Nanton was asked to sit down with Mr. Blaber. Dr. Nanton determined that Mr. Blaber met the criteria for delusional disorder and medication was best course of action to treat that disorder.

Both Doctors based their opinions on a study that Dr. Nanton described as "controversial," "limited" and "anecdotal." Dr. Nanton also gave his opinion on his experience with patients in an out patient setting.

A Sell order was issued on 12/14/2020, the order did not include an (IM) backup, so Mr. Blaber continued to refuse the medications until an amended order with IM backups was issued on 3/26/2021.

Mr. Blaber filled a peremptory writ of Mandamus in Oregon state Supreme court on 4/16/2021, to vacate the forced medication order issued by the county circuit court.

The Oregon Supreme court responded on 6/24/21 denying without explanation the petition for a writ of Mandamus (Appendix C)

The Oregon Supreme court issued an appellate judgement that denied the writ of Mandamus on 7/2/21 (Appendix D)

Mr. Blaber will be representing himself in this writ, because of his current confinement at the Oregon state hospital with limited computer access he apologizes to the court that the entire writ is not typed and double spaced.

This Petition should be granted because I am a presumed innocent American citizen that is being involuntarily medicated for the sole purpose of competency restoration against the opinion of the treating physician who the court has made responsible for my direct care.

Excerpt from (Appendix E) letter from Dr. Christianson in response to court's request for a Medication list Pursuant to ORS 161.372 :

" It is the opinion of the defendant's treating physician that an order for medications does not have a substantial likelihood to allow the defendant to gain or regain fitness to proceed. Therefore, pursuant to ORS 161.372 an involuntary medication report will not be filled.

Excerpt from (Appendix A) Pg 3 involuntary medication order :

" When Dr. Christianson testified in November, he said he had become more convinced since his August testimony that defendant does not suffer from a mental illness and as a result he would not administer involuntary medication if the court ordered."

The letter sent in Appendix E, is not just Dr. Christianson offering his opinion as my treating physician but stating on behalf of Oregon State Hospital to the court that an order detailing medications would not be forthcoming because it was not permissible under the ORS 161.372 statute adopted by the Oregon legislature.

Once that letter was sent the hearing for involuntary medication should have never taken place because the criteria the legislature adopted, Codifying Sell and Lopes was not met.

In Sum, the forensic evaluator issued a report to the court finding me never able without the administration of medication. It should be noted, I do not believe I have a mental illness and have no history of same. The state requested a competency hearing based on the evaluator's comments in her report that Dr. Christianson, the treating Physician had contacted her giving his opinion that I did not suffer from a mental health disorder and his belief I was trial competent. The court determined I had a qualifying mental health disorder, prompting the state to pursue an involuntary medication hearing. Dr. Christianson on behalf of Oregon State Hospital authored a letter stating his belief that medications would not be medically appropriate and that pursuant to ORS 161.372, a medication report would not be sent. The state then called a Doctor to testify medications would be effective and to author a letter having never before met me.

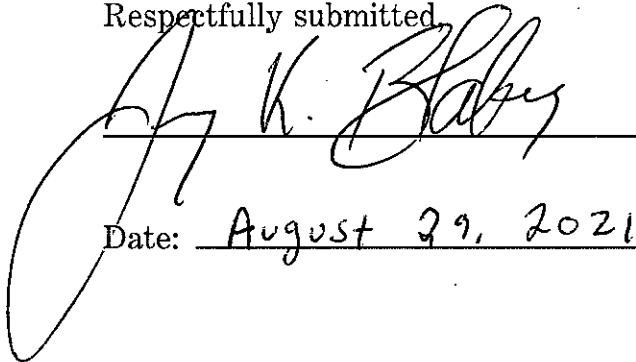
The Supreme court in (*Sell v. US*) decided it was allowed to involuntarily medicate the mentally ill for the sole purpose of competency restoration but set out a set of standards a court must find because of the important liberty rights that exist in refusing it. This court also intended at the time the use of involuntary meds be rare. If a circuit court can ignore it's own state's legal precedent, go against the opinion of a treating physician, then it can medicate anyone for any reason and that is an issue of national importance.

I am not a lawyer but ironically this two year ordeal that has had my life and freedom in a legal limbo, has committed me to becoming one. No American should ever have to go through this again. I ask this court as the final arbiter of the law and as the guardian and interpreter of the constitution, to grant this writ for myself and future presumed innocent defendants in my situation.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,


Date: August 29, 2021