In the Supreme Court of Georgia

Decided: June 27, 2011

S11A0290. DUPREE v. SCHWARZKOPHF, et. al.

NAHMIAS, Justice.

In November 2003, Ladale Dupree was found not guilty by reason of insanity of several crimes, including aggravated assault. He was then involuntarily committed to the Northwest Georgia Regional Hospital. In August 2009, the hospital petitioned the committing court for Dupree's unconditional release, alleging that he no longer met "the civil commitment criteria under Chapter 3 of Title 37." OCGA § 17-7-131 (f). On November 20, 2009, the committing court denied the petition.

About three weeks later, Dupree filed this habeas corpus action in the Superior Court of Floyd County, where the hospital is located. See OCGA § 37-3-148 (a) (providing that a person detained in a mental health facility may "at any time . . . petition, as provided by law, for a writ of habeas corpus"). After a hearing at which Dupree offered some evidence beyond what he had presented to the committing court, the habeas court also denied release. Dupree appeals,

arguing that he proved he no longer met the standard for involuntary inpatient treatment and the habeas court therefore erred in denying his release. We affirm the habeas court's judgment.[1]

1. To be committed for involuntary inpatient treatment, a person must be "mentally ill" and must either present "a substantial risk of imminent harm to that person or others, as manifested by either recent overt acts or recent expressed threats of violence which present a probability of physical injury to that person or other persons," OCGA § 37-3-1 (9.1) (A) (i), or be "so unable to care for [his] own physical health and safety as to create an imminently life-endangering crisis," § 37-3-1 (9.1) (A) (ii). Only subsection (A) (i) is at issue in this case.

To be released from involuntary inpatient treatment, whether initially committed civilly under the provisions of OCGA Title 37, Chapter 3, or following a verdict of not guilty by reason of insanity in a criminal case, see OCGA § 17-7-131 (d), (e), the patient must establish "by a preponderance of

[1] The appellees suggest that this appeal has become moot because the committing court conditionally released Dupree in August 2010. However, because Dupree sought unconditional release in his habeas petition, the appeal is not moot. In addition, because we affirm the habeas court on the merits, we need not address the appellees' res judicata argument.

admissible evidence the illegality of his continued detention in a mental hospital, i.e., that he no longer meets the standards for commitment." Hogan v. Nagel, 276 Ga. 197, 199 (576 SE2d 873) (2003). On appeal, we accept the habeas court's findings of fact unless they are clearly erroneous, while independently applying the law to the facts. See Henderson v. Hames, 287 Ga. 534, 536 (697 SE2d 798) (2010). See also Nagel v. State, 262 Ga. 888, 892 (427 SE2d 490) (1993) (holding that on appeal from a committing court's release ruling, we review the evidence in the light most favorable to the ruling).

2. At the habeas hearing, Dupree's primary witness was Dr. Julie Oliver, the Director of the In-Patient Forensic Program at the hospital. Dr. Oliver testified that Dupree suffers from schizo-affective disorder (bipolar-type), antisocial personality disorder, and paranoid personality disorder. What she characterized as Dupree's mental illness – his schizo-affective disorder – was in remission due to his taking the medication currently prescribed to him. She did not "see any symptoms of paranoia" or "any active psychiatric symptoms in him at this time," and she asserted that Dupree does not present "a substantial risk of imminent harm to [himself] or others that's manifested by either recent overt acts of violence or recent expressed threats of violence to others." Dr.

Oliver also testified that Dupree's paranoid and antisocial personality disorders cannot be treated with medication, that there is "not really any effective treatment for personality disorders," and that personality disorders "are not supposed to be considered as a mental illness" in determining if someone meets the criteria for involuntary hospitalization.

On cross-examination, however, Dr. Oliver testified that Dupree is "easily influenced by de-stabilizers" such as other patients, family members, and social connections, lacks insight into his situation to the extent that he does not do "things that are designed to improve his situation," and is verbally aggressive at times. She admitted that Dupree "has a history of being violent when he's not on medication." She agreed with a July 2009 risk assessment by another doctor at the hospital, which concluded that, outside the hospital environment, Dupree's risk of violence is consistently high because of his personality disorders, which "are inherently linked to violent behavior," and would also be high because of his schizo-affective disorder if he did not take his medication. She added that if Dupree left the hospital and did not take his medication, "no guarantee could be made about his potential for violence."

Dr. Oliver also acknowledged that in May 2009, after Dupree had been

living with his family for several months while on conditional release, the release was revoked because he presented a risk of imminent harm to his family, having threatened to put one of them in a "body bag." Dr. Oliver conceded that, at that time, she was so concerned by the threat that she asked law enforcement instead of hospital personnel to pick up Dupree. She explained that she did not know if Dupree was taking his medication while on release, that without his medication there was a chance he would act violently, and that she did not want the situation to escalate.

According to Dr. Oliver, within minutes of Dupree's risk-assessment evaluation in July 2009, he lashed out verbally at staff members at the hospital. There was also evidence that, in November or December 2009, Dupree became upset at another patient and threw his CD player at him, and at a court hearing in 2006, Dupree had to be physically restrained by deputies. Moreover, in 2005, while living with his mother during his first conditional release, Dupree hurt his step-father by pushing him and causing his head to hit a chest of drawers, leading his mother to call the police to return him to the hospital.

Dupree's mother, who is a nurse, testified at the habeas hearing that she was willing for Dupree to live with her and her husband and that she would try

to make sure he took his medications. She testified on cross-examination, however, that she preferred for Dupree to live on a farm in Iowa with his paternal grandparents, who were 82 and 73 years old.

3. We conclude that the evidence in the record supports the habeas court's finding that Dupree was not entitled to unconditional release.

a. Mental Illness: Dupree concedes that his schizo-affective disorder constitutes a mental illness under Georgia law, but he argues that personality disorders do not. Like the habeas court, we disagree.

> The [American Psychiatric Association's Diagnostic and Statistical Manual (4th Ed. 1994) ("DSM IV")] defines a personality disorder as "an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture [which] is pervasive and inflexible, has an onset in adolescence or early adulthood, is stable over time, and leads to distress or impairment." DSM IV at 629. A personality disorder manifests itself in at least two of the following areas: 1. cognition, 2. affectivity, 3. interpersonal functioning, or 4. impulse control. Id. In addition, like all mental disorders classified in the DSM IV, a personality disorder must be a "clinically significant behavioral or psychological syndrome or pattern." Id. at xxi. Finally, a personality disorder differs from mere personality traits. "Only when personality traits are inflexible and maladaptive and cause significant functional impairment or subjective distress do they constitute a personality disorder." Id. at 630.

United States v. Murdoch, 98 F3d 472, 479 (9th Cir. 1996) (Wilson, J.,

concurring).

Thus, "a personality disorder is more than just a repeated pattern of behavior. It is an enduring pattern of behavior *and* inner experience which can affect cognition (i.e. ways of perceiving and understandings) and affectivity (emotional reactions)." Id (emphasis in original). Accord OCGA § 17-7-131 (a) (2) (excluding from the definition of "mental illness" for a verdict of guilty but mentally ill a "mental state manifested only by repeated unlawful and antisocial conduct").

By the widely recognized DSM standard and in terms of his mental condition as described at the habeas hearing, Dupree's personality disorders clearly qualify as mental illnesses as defined by OCGA § 37-1-1 (12) – a "disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life." See also Adams v. Bartow, 330 F3d 957, 961 (7th Cir. 2003) (holding that antisocial personality disorder qualified as a mental illness under Wisconsin's Sexually Violent Person Commitments Statute); In re Rosell, 547 A2d 180, 182-183 (D.C. 1988) (holding that borderline personality disorder qualified as a mental illness under a statute that defined mental illness as "'a psychosis or

other disease which substantially impairs the mental health of a person'").

In testifying that Dupree's personality disorders are not "supposed to be considered as a mental illness" in determining whether a person meets the criteria for involuntary commitment under Georgia law, Dr. Oliver was wrong on a matter of law. And to the extent she thought they did not meet some other definition of mental illness, her opinion was based on an inapplicable standard and was not relevant evidence. Dr. Oliver testified that personality disorders cannot really be treated effectively, but even if that is true, it does not require the State to release a person with such disorders into the community if that mental illness causes the person to be a threat to others. See Kansas v. Crane, 534 U.S. 407, 413 (122 SC 867, 151 LE2d 856) (2001) (explaining that "the States retain considerable leeway in defining the mental abnormalities and personality disorders that make an individual eligible for commitment" and that "the science of psychiatry . . . informs but does not control ultimate legal determinations [and] is an ever-advancing science, whose distinctions do not seek precisely to mirror those of the law"); Nagel v. State, 264 Ga. 150, 152 (442 SE2d 446) (1994) (holding that "'[t]he trial court, rather than mental health professionals, has the responsibility for deciding applications for release'" (citation omitted)).

We therefore conclude that both Dupree's personality disorders and his schizo-affective disorder qualify as mental illnesses under OCGA § 37-1-1 (12).

b. Substantial Risk of Imminent Harm: Dr. Oliver conceded that Dupree's paranoid and antisocial personality disorders would make him an imminent threat of harm to others if he were released. Moreover, the evidence summarized in Division 2 above authorized the habeas court to find that Dupree's schizo-affective disorder also would make him an imminent threat of harm to others if he were unconditionally released. On the two prior occasions that Dupree was conditionally released outside the structured hospital environment, he engaged in behavior that was dangerous or threatening to others and had to be returned to the hospital by the police. Moreover, there was evidence that Dupree is easily influenced negatively by family members and social contacts, lacks insight that enables him to cope with situations, and has a history of violence due to his schizo-affective disorder when not on medication. Although Dr. Oliver testified that Dupree's schizo-affective disorder was in remission because of his medication and there was no direct evidence that Dupree was not taking his medication on the two prior occasions of actual and threatened violence against others while outside the hospital

setting, the court could infer that he had stopped effectively medicating himself then and would do so again if released, so that his schizo-affective disorder, in addition to his personality disorders, would create a substantial risk of imminent harm to other people.

Dupree's May 2009 threat to put a family member in a body bag qualifies as a "recent expressed threat of violence." OCGA § 37-3-1 (9.1) (A) (i). Although the incident occurred several months before the habeas hearing, Dupree's freedom and activities had been substantially limited since his return to the hospital, thus significantly curtailing his ability to commit additional threats and acts of violence. See Nagel v. State, 264 Ga. at 152 (holding that the trial court was authorized to conclude that even though the patient had not been violent in the structured hospital setting, the evidence supported a finding that he posed a risk of imminent harm if released); Pitts v. State, 151 Ga. App. 691, 695 (261 SE2d 435) (1979) (same). Moreover, even more recently, and even while under the hospital's supervision during the time between the committing court's ruling and the habeas hearing, Dupree committed a violent act toward another patient after becoming upset. Finally, we note that Dupree's verdict of not guilty by reason of insanity established that he committed his otherwise

criminal violent acts because of mental illness and raised a presumption of continuing insanity. See Nagel, 264 Ga. at 151.

Judgment affirmed. All the Justices concur, except Hunstein, C.J., who concurs in the judgment only.