[J-37-2008]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

CASTILLE, C.J., SAYLOR, EAKIN, BAER, TODD, McCAFFERY, JJ.

COMMONWEALTH OF PENNSYLVANIA,	: No. 63 EAP 2004
	:
Appellant	: Appeal from the Order of the Court of
	: Common Pleas of Philadelphia County
	: entered November 22, 2004 at CP#8208-
v.	: 3826 1/11
	:
	:
HERBERT WATSON,	: ARGUED: October 16, 2006
	: RESUBMITTED: January 11, 2008
Appellee	: REARGUED: April 15, 2008

DISSENTING OPINION

MR. JUSTICE BAER **DECIDED: July 22, 2008**

For the reasons developed in my dissenting opinion in the companion case of Commonwealth v. Sam, No. 49 EAP 2005, J-36-2008, ___ A.2d ___ (Pa. 2008), I respectfully dissent because the alleged governmental interest in this case fails to justify the substantial violation of the inmates' liberty interest resulting from compelled psychiatric medication. The asserted governmental interest in finality through the PCRA pales in comparison to the interest in bringing alleged criminals to trial, an interest which the United States Supreme Court found to be sufficient only in rare cases in Sell v. United States, 539 U.S. 166 (2003). Accordingly, I would affirm the trial court's denial of the Commonwealth's attempt to compel the medication of inmates against their will.

The consequence of my conclusion in this case, however, diverges from that in Sam. In Sam, I concluded that the case should be remanded for dismissal, because the defendant did not approve of the PCRA petition. In contrast, in this case, defendant Watson actually filed the PCRA petition, *pro se*. Additionally, when he was found to be incompetent to pursue the petition, the court appointed his mother as next friend. The appointment is significant because it provides a less intrusive alternative to obtain the finality inherent in collateral review. As discussed in the Majority, the United States Supreme Court in Sell required that prior to ordering compelled medication in violation of an individual's liberty interest,[1] "[t]he court must find that any alternative, less intrusive treatments are unlikely to achieve substantially the same results." See Sell, 539 U.S. at 180.

In Commonwealth v. Haag, 809 A.2d 271 (Pa. 2002), this Court was asked whether it was appropriate to order a next friend to proceed with a first PCRA petition on behalf of an incompetent capital petitioner. The next friend argued that ordering the proceedings to go forward was inappropriate, since in order to pursue PCRA relief, the petitioner must be competent. Furthermore, she contended that the lack of competency and its effect on communication with counsel may justify suspending the PCRA proceedings even after a next friend has been appointed. We concluded, "that when represented by a next friend and counsel, a prisoner's incompetence is not a bar to effective collateral review in a death penalty case." Id. at 278. Indeed, we based our decision in part on the importance of finality, in hopes of resolving issues while memories and evidence are still fresh. "Our decision to decline to indefinitely suspend these proceedings based upon speculation that

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[1] The state must also prove a sufficient government interest to overcome the invasion of the constitutionally protected liberty interest of the inmate. As more fully developed in my dissent in Sam, I adamantly conclude that the government interest in finality of the PCRA is not sufficient to overcome the liberty interest in avoiding forced medication, absent more compelling facts.

additional claims may exist, but are, as of now, undiscoverable, aligns with the General Assembly's interest in according finality to PCRA proceedings." Id. at 281. Accordingly, within the framework of Sell, our decision in Haag makes clear that a next friend is a less intrusive alternative to involuntary medicating a capital petitioner for purposes of pursuing collateral relief.

Although the Majority and the Commonwealth claim that forced medication will allow for finality and for Watson to obtain any benefits available through PCRA relief, I conclude that those goals can be attained through the already appointed next friend in this case. Accordingly, I conclude that the Commonwealth failed to demonstrate a necessary element of the Sell test, and I would affirm the denial of forced medication.

Madame Justice Todd joins this dissenting opinion.