Duquesne Law Review

Volume 10 | Number 4 Article 9

1972

# Mental Health - Validity of Commitment Statute

Frank Leo Brunetti

# Case Comment

MENTAL HEALTH—VALIDITY OF COMMITMENT STATUTE—The United States District Court for the Middle District of Pennsylvania has held Pennsylvania's two doctor commitment procedure for the mentally ill to be unconstitutional.

*Dixon v. Attorney General of the Commonwealth of Pennsylvania*, 325 F. Supp. 966 (M.D. Pa. 1971).

Plaintiff was convicted of criminal charges and committed to Fairview State Hospital for the criminally insane. After the original authority for his commitment had elapsed he was recommitted pursuant to section 4404 of the Mental Health and Mental Retardation Act of 1966 (hereafter referred to as Act).[1] Pursuant to rule 23a of the Federal Rules of Civil Procedure,[2] plaintiff filed a class action suit alleging section 4404 of the Act to be unconstitutional on its face and in its application to plaintiff and members of his class. The substantial con-

---

1. PA. STAT. ANN. tit. 50, § 4404 (1969). Commitment on application by relative, etc.; physician's certificates; review

(a) A written application for commitment to a facility may be made in the interest of any person who appears to be mentally disabled and in need of care. It may be made by a relative, guardian, friend, individual standing in loco parentis to the person to be committed, or by the executive officer or an authorized agent of a governmental or recognized nonprofit health or welfare organization or agency, or any responsible person.

(b) Such application shall be accompanied by the certificate of two physicians who have examined the person whose commitment is sought, within one week of the date of the certificates, and who have found that, in their opinion, such person is mentally disabled and in need of care. In the case of a mentally retarded person, the physicians certification shall be accompanied by the report of a psychologist. No person shall be committed hereunder if any certificate is dated more than thirty days prior to the date of commitment, except that if the mental disability consists of mental retardation the certificates may be dated no more than three months prior to the date of commitment. The application, certificate and report, if any, shall be signed and sworn to or affirmed.

(c) The director may receive the person named in the application and detain him until discharge in accordance with the provisions of this act. When application is made by any person other than a relative or guardian, the director upon reception of the person named in the application shall notify the appropriate relative or guardian of such person of the commitment.

(d) Every commitment made under this section except those to the Veterans Administration or other agency of the United States government, shall be reviewed at least annually by a committee appointed by the director from the professional staff of the facility wherein the person is detained, to determine whether continued care and commitment is necessary. Said committee shall make recommendations to the director which shall be filed at the facility, and be open to inspection and review by the department, and such other persons as the secretary, by regulation, may permit.

2. FED. R. CIV. P. 23(a).

stitutional issue required the convening of a three judge district court as ordered by the chief judge of the circuit.[3]

The United States District Court for the Middle District of Pennsylvania declared section 4404 of the Act to be unconstitutional on its face and as applied to plaintiff and members of his class.[4] While declaring section 4404 of the Act unconstitutional, the opinion was silent on why. The court said only that section 4404 was devoid of the due process of law required by the fourteenth amendment.[5] The statute provided for recommitment by way of a "paper notation" without any formal hearing or process.[6] It also denied to the patients—the right to counsel, the right to trial by jury, the right to confrontation and cross-examination, and other criminal judicial safeguards. One reason the *Dixon* court declared section 4404 of the Act unconstitutional might be that mental patients can no longer be considered wards of the state.[7] It is submitted that the doctrine of parens patriae[8] is no longer viable.

This court, following the lead of others around the country,[9] has come to realize that justice will not be done by saying a mental patient is a ward of the state, and the state is only acting in his beneficial interest. The court realized that the commitment determination is no different from any other legal determination. The special procedure which had been followed in determining the issue of insanity was not beneficial to the patient. When a person is to be committed against his will, he should be given a full judiciary hearing.

The court, in its order, outlined a procedure by which all members of the plaintiff's class were to be recommitted or discharged, and how future involuntary commitments were to be obtained.[10] The court specifically dealt with the plaintiff and members of his class, but was silent on how other patients who had been committed under section 4404 of the Act were affected by the decision. They did not say whether

3. This was done pursuant to 28 U.S.C. § 2284(1) (1970).
4. 325 F. Supp. 966, 973 (M.D. Pa. 1971).
5. *Id.* at 972.
6. PA. STAT. ANN. tit. 50 § 4404 (1969).
7. Bolton v. Harris, 395 F.2d 642 (D.C. Cir. 1968), where the court declared unconstitutional a statute which provided for commitment of a person found not guilty of criminal charges due to temporary insanity. This commitment, as in *Dixon*, was without criminal procedural safeguards.
8. BLACK'S LAW DICTIONARY 1269 (3d ed. 1970) defines parens patriae in the United States, as a sovereign—refering to the sovereign power of guardianship over a person under disability, such as minors, and insane and incompetent persons.
9. *See, e.g.*, Bolton v. Harris, 395 F.2d 642 (D.C. Cir. 1968).
10. 325 F. Supp. 966, 974-75 (M.D. Pa. 1971).

their decision should have been retroactively applied to invalidate all commitments which had been obtained under section 4404 of the Act since the statute's enactment. Normally a decision is considered to be retroactive unless stated otherwise.[11]

The Attorney General consented to the order, declining to appeal the decision. The Pennsylvania Department of Public Welfare, Office of Mental Health, complied with the decision and stated that as of June 15, 1971, no further commitments were to be obtained under section 4404 of the Act. In addition, all jurisdictions were advised by the Attorney General that all patients currently hospitalized under section 4404, and all other commitments under similar provisions of law in effect before the enactment of the 1966 Act, were to be re-evaluated and either discharged where appropriate, or recommended for commitment under an appropriate section of the Act.[12]

Approximately 75% of the state schools and hospitals' population were committed under section 4404, or under similar provisions of law.[13] The results of the patients requiring conversion were these:

1. Approximately 1.5% were discharged.
2. Approximately 88% were converted to section 4402 commitments.[14]
3. Approximately 8% were placed under section 4403.[15]
4. Approximately 2.5% were committed, or are being processed by civil court commitment.[16]

The question raised by these statistics is whether there should have been a recommitment of all patients who were committed under section 4404 of the Act and similar provisions of law in effect prior to 1966. Should 4404 patients have been recommitted under section 4402 of the Act, or should the decision have been applied prospectively to uphold all prior commitments?

---

11. City of Philadelphia v. Schaller, 148 Pa. Super. 276, 280, 25 A.2d 406, 409 (1942).
12. Letter from Ralph J. Phelleps, Special Assistant for Service to Offenders, Office of Mental Health, Department of Public Welfare, December 15, 1971.
13. *Id.*
14. *Id.*; PA. STAT. ANN. tit. 50, § 4402 (1969), provides for voluntary commitment by written application of anyone over eighteen years old. If the person is under age eighteen, an application can be made by his parents or someone acting in place of his parents. The patient is free to leave the institution at any time.
15. Letter, *supra* note 12; PA. STAT. ANN. tit. 50, § 4403 (1969), provides for voluntary commitment in a procedure very similar to § 4402, except that the duration of the commitment can not exceed thirty days.
16. Letter, *supra* note 12; PA. STAT. ANN. tit. 50, § 4406 (1969), provides for involuntary civil court commitment pursuant to a hearing. The court order commanding commitment will not be given until the person has been given a full physical examination.

In at least one other jurisdiction where the court was faced with this situation they decided, in the interest of justice, to apply their decision prospectively. In *Bolton v. Harris*[17] the court found unconstitutional a statute which committed a person acquitted of criminal charges because of temporary insanity without a judicial determination.

Relying on a patient's right to bring a writ of habeas corpus to decide anew the sanity issue, the court declared its decision was to be applied prospectively. Rather than upsetting all commitments made pursuant to the now unconstitutional statute, the *Bolton* court felt that the prior commitments should remain valid—unless a patient wished to contest his confinement through the writ of habeas corpus. The court reviewed the burden on the administration of justice; it felt that in the interest of justice its decision should be applied prospectively. Unfortunately, the court did not review the criteria necessary to apply a decision prospectively and one can only speculate why it did so.

The traditional view in Pennsylvania is that a decision will be given retroactive effect, and its "pronouncements will be considered as the law from the beginning."[18] Nevertheless, the United States Supreme Court in *Linkletter v. Walker*[19] said "the Constitution neither requires nor prohibits retrospective effect."[20] Thus it is within the discretion of the court to apply a decision retroactively, or prospectively. Since *Linkletter* was a criminal case, and the instant case a civil one, one might argue that *Linkletter* is not controlling. However, "no distinction is drawn between civil and criminal cases"[21] in the retroactive or prospective application of a decision. Even if one would draw a distinction, the *Dixon* court said, "commitment procedure should be the same in civil proceedings as in criminal or quasi-criminal proceedings . . . ."[22]

17. 395 F.2d 642 (D.C. Cir. 1968).

18. City of Philadelphia v. Schaller, 148 Pa. Super. 276, 280, 25 A.2d 406, 409 (1942), *citing* People *ex rel.* Rice v. Graves, 249 App. Div. 128, 273 N.Y.S. 582 (1934); *accord,* Buradus v. General Cement Products Co., 356 Pa. 349, 52 A.2d 205 (1947); Menge v. Philadelphia, 36 Pa. D. & C. 352 (C.P. Philadelphia 1939).

19. 381 U.S. 618, 629 (1965); *accord,* Great Northern Ry. v. Sunburst Oil and Refining Co., 287 U.S. 358 (1932).

20. 381 U.S. 618, 629 (1965).

21. *Id.* at 629.

22. Dixon *citing* Denton v. Commonwealth of Kentucky, 383 S.W. 2d 681 (Ky. 1964); *contra,* Tate v. Shovlin, 205 Pa. Super. 370, 208 A.2d 924 (1965), where the court said the commitment proceedings were not criminal in nature; rather they were "collateral". This "collateral" proceeding was one in which the mental condition of the person involved was determined without a full judicial hearing. Full procedural safeguards were not given since the proceeding was for the benefit of the person, the public, or both.; *see also* Comment, *Equal Protection and Commitment of the Insane in Wisconsin,* 50 MARQ. L. REV. 120 (1967).

The criteria used in deciding if a decision should be prospectively applied was outlined in *Linkletter, Stovall v. Denno,*[23] *Johnson v. New Jersey,*[24] and *Desist v. United States.*[25] In *Johnson* the Court said, "cases establish the principle that in criminal litigation concerning constitutional claims the court in the interest of justice will make the rule prospective . . . where the exigencies of the situation require such an application . . . ."[26]

The criteria which *Desist* outlined to guide the resolution of the question are (1) the burden on the administration of justice by the retroactive effect of the new standard, (2) the good faith reliance on the old standard, and (3) the purpose to be served by the new standard.[27] By evaluating these factors the *Dixon* court could have decided if the decision was to be applied prospectively. If the burden on the administration of justice was too great, and the reliance on the old standard was too severe, and if the purpose to be served would not have been realized, the new standard could have been applied prospectively.[28] But:

> Where the major purpose of new constitutional doctrine is to overcome an aspect of the criminal trial which *substantially impairs its truth-finding function and so raises serious questions about the accuracy of guilty verdicts in past trials,* the new rule has been given retroactive effect. Neither good faith reliance by state or Federal authorities on prior constitutional law or accepted practice, nor severe impact on the administration of justice has sufficed to require prospective application in these circumstances. (Emphasis added).[29]

If the old commitment procedure substantially impaired the truth finding function it should have been applied retroactively.[30]

The issue in *Dixon* was which standard was applicable to the 4404 commitment procedure declared unconstitutional by the court. Did

23. 388 U.S. 293 (1967); *see also* Fairchild, *Limitations of New Judge-Made Law to Prospective Effect only: "Prospective Overruling" or "Sunbursting,"* 51 MARQ. L. REV. 254 (1968).
24. 384 U.S. 719 (1966).
25. 394 U.S. 244 (1969).
26. 384 U.S. 719, 726-27 (1966).
27. 394 U.S. 244 (1969).
28. Linkletter v. Walker, 381 U.S. 618 (1965).
29. Williams v. United States, 401 U.S. 646 (1971), involving two petitioners, one seeking direct review of his criminal conviction, the other collaterally attacking his conviction through a writ of habeas corpus. The Supreme Court in a lengthy opinion said the three criteria for retroactive application were not met, and that *Chimel v. California,* 395 U.S. 752 (1969), was not applicable to searches conducted prior to the date of the decision.
30. *Id.*

the *Dixon* court say the old standard was completely unfair and that it failed to *accurately* decide whether a person warrants commitment; or, did the court think that, for the most part, commitment was accurate as to the issue of sanity?

It is true the former procedure lacked all the judicial safeguards which are offered in criminal trials. Nevertheless, up to the time of the *Dixon* decision a commitment proceeding was not considered to be a criminal proceeding but rather a collateral one—one in which the court determined the mental condition of the person involved. The commitment proceeding followed the doctrine of parens patriae,[31] and was not considered to be adversarial as in a criminal trial. Rather the state, acting in a benign way, would decide in an informal proceeding if someone was "in need of care."[32]

In view of this background, one should *not* compare the *old procedure* to a criminal standard to decide whether it was fundamentally unfair. Rather, it should be compared to a civil procedure of its kind. In comparing the two procedures, one *should not* say the old procedure was *fundamentally unfair*; rather it was merely another way of arriving at the determination of insanity. The new procedure, outlined in *Dixon*, is more aligned with today's idea that involuntary commitment to a mental institution is in the nature of a criminal proceeding.[33]

Comparing this case with *In re Gault*,[34] it can be seen that the transition from an informal quasi-criminal to a formal criminal hearing is identical. *Gault* dealt with a fifteen-year-old boy who was taken into custody because he made lewd telephone calls. After a hearing in a juvenile court, Gault was committed to a state industrial school without: notice of the charges; the right to counsel; the right to confrontation and cross-examination; the privilege against self-incrimination; the right to a transcript of the proceedings; and the right to appellate review.[35]

Prior to *Gault*, juvenile delinquency proceedings were generally considered not to be in the nature of a criminal proceeding. The state argued, on appeal, that due process protections did not apply, for the proceedings were intended to help and rehabilitate the youthful offender and not to punish him. The state was acting in parens patriae.

31. Tate v. Shovlin, 205 Pa. Super. 370, 374, 208 A.2d 924, 926 (1965).
32. *Id.*
33. Baxstrom v. Herold, 383 U.S. 107, 114-15 (1965).
34. 387 U.S. 1 (1967).
35. *Id.* at 10.

This argument was flatly rejected, and the court held that procedural safeguards would have to be given to the youthful offender during the juvenile hearing.[36] After *Gault* was decided, *Cradle v. Peyton*[37] considered whther Gault's standards should be retroactively applied. Cradle, age 17, was brought before a juvenile court on two charges of armed robbery. He was not represented by counsel, nor was one provided. The *Cradle* court said, "we believe that in the absence of counsel, proceedings have been scrupulously fair and without prejudice to the accused."[38] The court then concluded that the decision should be applied prospectively. On appeal to the Supreme Court, certiorari was denied.[39]

Both *Gault* and *Dixon* implement the procedural safeguards of the criminal proceedings. Now that the *Dixon* court has decided to treat commitment to a mental institution as a criminal proceeding it is believed the new standard should have been prospectively applied.

### *The Burden and the Reliance*

If the *Dixon* decision would have been applied retroactively, that is if everyone who was committed under section 4404 had been given full judicial hearings, the courts would have been flooded with litigation. Statistics show that 75% of the patients in our mental hospitals had been committed pursuant to section 4404, or other similar involuntary commitment statutes amended by the Act.[40] Undoubtedly this number totaled in the tens of thousands. However, this problem was eliminated when the Pennsylvania Department of Public Welfare, Office of Mental Health, "voluntarily" recommitted 88% of the total population who were originally committed under section 4404 and other similar provisions of law in effect prior to the enactment of the 1966 Act.

A few questions are raised concerning this procedure. First, if one is going to voluntarily commit 88% of the section 4404 committals, then

36. *Id.*

37. 208 Va. 243, 156 S.E.2d 874 (1967); *accord*, State v. Hance, 2 Md. App. 162, 233 A.2d 326 (1967); Sult v. Weber, 210 So. 2d 739 (Fla. 1968); Brumley v. Charles R. Denny Juvenile Center, 77 Wash. 2d 702, 466 P.2d 481 (1970), where the court said it felt for the most part the vast majority of the juvenile hearings held were fair, and therefore its decision was to prospectively apply *Gault*; *contra*, Application of Bille, 6 Ariz. App. 65, 429 P.2d 699 (1967); Marsden v. Commonwealth of Massachusetts, 352 Mass. 564, 227 N.E.2d 1 (1967).

38. 208 Va. 243, 248, 156 S.E.2d 874, 877 (1967).

39. 208 Va. 243, 156 S.E.2d 874 (1967), *cert. denied*, 392 U.S. 945 (1968).

40. Letter, *supra* note 12.

why weren't these patients committed in this manner originally? The reason for this may be that it was easier to obtain a section 4404 commitment (since the patient's permission was not needed and probably could not have been obtained). Why then was the state able to obtain permission now? One reason is that once a person is placed in an institution for any length of time, the coercive atmosphere makes the patient "accept" his position. Consequently the choice of either leaving the "safe" confines of the institution or staying in the institution is not really a choice at all. Therefore one has to question the validity of these "voluntary" recommitments.

If one considers both the burden on the administration of justice in giving every patient a trial, and the past reliance on section 4404 (that is 75% of the patients being committed pursuant to that section), one can see that two of the three propsectivity criteria have been met. The third criterion is also complied with. The purpose in applying the new *Dixon* standard retroactively would not be served, because the court did not say the old procedure was fundamentally unfair in impairing the truth-seeking function. As noted previously, its determination that the old statute was unconstitutional only said it was not in line with today's idea that commitment to a mental institution is in the nature of a criminal proceeding and therefore must have all of its judicial safeguards. The old method was only a different way of arriving at the insanity determination. Now that a new standard has been set, it can be applied prospectively.

### Discharge Through Writ of Habeas Corpus

If the decision had been applied prospectively, patients who were committed under section 4404 could have obtained relief through section 4426 of the Act dealing with the right to petition for a writ of habeas corpus.[41] Through this section those patients who had wished

41. Pa. Stat. Ann. tit. 50, § 4426 (1969), Habeas Corpus; discharge by order of court;
(a) Every person committed or detained in a facility by reason of the provisions of this act or any one acting on his behalf, may at any time, petition for a writ of Habeas Corpus and, except as hereinafter provided, said petition shall be filed in accordance with the provisions of the act of May 25, 1951.
(b) Said petition may be based upon the following grounds:
(1) The insufficiency or illegality of the proceedings leading to such person's commitment, or,
(2) Although the commitment proceedings were proper, such person's continued detention or hospitalization is not warranted by reason of mental disability. Where the petition is based on this ground; (i) it shall be accompanied by the affidavit of a physician stating that he has examined the person and is of the opinion that such

to protest their confinement could have brought a new action under section 4426(B)2 to decide the issue of insanity. The only requirement is that in order to get to court the patient must have a physician certify that he is sane.[42]

> Where the petition is based on [proper proceedings], it shall be accompanied by the affidavit of a physician *stating that he has examined the person and is of the opinion that such a person is not mentally disabled,* or that such mental disability does not require care or treatment in a facility . . . .[43] (Emphasis added).

In other words, in order for the patient to get a judicial determination of sanity, he must be declared sane by at least one physician. In light of the court decision in *Dixon* concerning certification by a physician as procedure for commitment, it is suspected that this requirement of a certification by a doctor that the patient is sane as a criterion for obtaining the writ of habeas corpus is at least arguably unconstitutional. This section suffers from the same infirmity as section 4404. It provides for a procedure which is devoid of due process of law—legal questions are determined by doctors who are unaware of applicable legal issues. Perhaps a better safeguard to protect the court from spurious claims would be a panel of lawyers to hear the patient's complaint. These lawyers would be familiar with commitment proceedings and their legal issues. If the panel feels that the patient has raised a question of sanity, then a full judicial hearing could be given. As seen in *Dixon,* when legal issues are left to physicians due process protections are left with them. *Legal questions are for lawyers—not doctors.*

If a patient wishes to challenge his commitment under 4404 he should be allowed to do so, subject to review by a panel of lawyers. As long as there is a question of sanity, it should be explored in a full judicial hearing.

To have the patient make a meaningful choice, when he attacks his commitment, more should be offered than just the choice of freedom. If a patient, when deciding to attack his confinement, is faced with stark freedom (meaning outright release) or the confines of the institution, he may choose the latter. But if he is given an alternative—a half-

person is not mentally disabled or that such metal disability does not require care or treatment in a facility, and (ii) the burden of proof shall rest upon the director responsible for such person's continued detention.

42. *Id.*

43. *Id.*

way house, he may be encouraged to attack his confinement and leave the institution.

This halfway house would be in the nature of a hospital or a *less institutionalized* home. There the patient could be given the opportunity to experience a less rigid form of living. Then, if he is given the choice to stay where he is at the institution, or to live in a halfway house where he can be reoriented to normal living, he would choose the latter. If this were done the patient could make a more meaningful choice; possibly 88% of the section 4404 commitals might not have "chosen" to remain in the institution.

Once the determination has been made that someone will have to be committed through a civil court commitment procedure, what is the standard for the burden of proof? Section 4406 of the Act requires that in order to be committed a patient "must be in need of care or treatment" by reason of "mental disability."[44] Yet in the *Dixon* order the court said:

> The burden of proof shall be as follows: The evidence found to be reliable by the fact-finder must establish clearly, unequivocally and convincingly that the subject of the hearing requires commitment because of *manifest indications that the subject poses a present threat of serious physical harm to other persons or to himself.* (Emphasis added).[45]

The question remains which standard is applicable to the hearing.

Since the court addressed itself to section 4404, and not 4406, one would say that they did not declare section 4406 unconstitutional. If anything, it would be considered as a *suggestion*; that it is unconstitutional and it could be followed or ignored when the constitutionality of the section is determined at a later time.

Probably the court, not mindful of the adequate standards already outlined in section 4406, was caught up in its zeal to uphold the highest constitutional standard possible and, through the course of the order, set a higher standard of proof. If the court addressed itself directly to the constitutionality of section 4406, it is certain it would have been approved.

Reviewing the fact that the old commitment procedure was *not* fundamentally unfair; and the burden on the administration and re-

44. PA. STAT. ANN. tit. 50, § 4406 (1969).
45. 325 F. Supp. 966, 974 (M.D. Pa. 1971).

liance on the old statute was great, *Dixon* should have been applied prospectively. This does not mean all of the patients committed under the old section should have been denied relief. Using this "reformed" writ of habeas corpus a patient who has a legally sufficient question of sanity can get full judicial determination of the issue.

When deciding to attack his commitment a patient should be offered a choice of either going to a halfway house or remaining in the institution. If he does choose to attack his commitment the new hearing will be per *Dixon*, a full judicial hearing. In this hearing the burden of proof will be the standard of proof as outlined under section 4406 of the Act.

*Frank Leo Brunetti*