Docket No. _____

IN THE SUPREME COURT OFAPPEALS OF WEST VIRGINIA

STATE OF WEST VIRGINIA ex rel. AARON JIMMIE URBAN

v.

DAVE A. HARDY,

Kanawha County Circuit Court Judge

Kanawha County Circuit Court Case 20-2023-F-139

PETITION FOR WRIT OF PROHIBITION

John Sullivan
Deputy Chief Public Defender
P.O. Box 2827
Charleston, WV 25330
Bar No. 6808
304-348-2323
jsullivan@wvdefender.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CONSTITUTIONS

CASES

STATUTES

Petitioner Aaron Jimmie Urban, by counsel John Sullivan, requests that this Court issue a rule to show cause to the Kanawha County Circuit Court, Judge David Hardy, prohibiting the entry of an order permitting involuntary medication for the purpose of reaching competency to stand trial.

QUESTIONS PRESENTED

1. Does a Circuit Court have authority under West Virginia law to issue an Order permitting involuntary medication of an incompetent criminal defendant for the purpose of obtaining or restoring competency to stand trial?

2. Does the West Virginia Constitution require higher standards of protection than afforded by the Federal Constitution regarding involuntary medication for the purpose of restoring competency to stand trial?

3. Was the Circuit Court's involuntary medication order appropriate under the facts of this case and the standards of the West Virginia and United States Constitutions?

STATEMENT OF THE CASE

Mr. Urban was indicted in Kanawha County in the January 2023 term of court with numerous felony charges including first degree robbery, use of a firearm in a felony, fleeing with reckless indifference, child neglect, grand larceny, and possession of a firearm by a felon. (AR 1) Defense counsel moved for an evaluation for competency to stand trial. (AR 5) Based on this evaluation and testimony of the appointed psychologist, the circuit court found Mr. Urban incompetent to stand trial due to mental illness and committed him to Sharpe Hospital for restoration to competency by an order dated January 12, 2024. (AR 10) An Order extending the commitment was entered on June 13, 2024. (AR 16) The Court received a request from the

hospital to permit involuntary medication of Mr. Urban for the purpose of restoring competency. (AR 18)

A hearing was held on September 19, 2024 before Judge Hardy. At the September 19 hearing, Dr. Aynampudi, a psychiatrist employed by Sharpe Hospital, testified. He was questioned by the prosecutor, defense counsel, and the Circuit Court. His testimony directly covered the factors set forth in the case of *Sell v. United States*, 539 U.S. 166, 123 S.C. 2174 (2003). This federal case involved involuntary medication of a defendant for the purpose of gaining competency to stand trial. Aaron Urban testified on his own behalf. He stated that he had made a decision to refuse medication due to his concern about side effects.

The Court ordered that the hospital was permitted to involuntarily medicate Mr. Urban for the purpose of obtaining competency to stand trial. The Court's order found *Sell* to be applicable and made specific findings regarding each factor. The order was entered on September 20, 2024. (AR 24)

The petitioner has submitted an appendix record of the applicable proceedings from the Circuit Court file. Due to the immediacy of this request, the appendix does not include a transcript of the September 19, 2024 hearing. The petitioner intends to request this transcript and seek leave of the Court to supplement the appendix record.

SUMMARY OF THE ARGUMENT

The Court's order for involuntary medication was based the United States Supreme Court in *Sell v. United States*, 539 U.S. 166, 123 S.C. 2174 (2003). *Sell* was a federal case involving a federal prosecution. The opinion set the required standards under the Fifth Amendment for the involuntary medication of a defendant for the purpose of obtaining competency to stand trial.

There is no West Virginia case adopting or recognizing the *Sell* holding or otherwise approving involuntary medication of an incompetent defendant. The text of the West Virginia Constitution provides greater liberty and due process protections than the United States Constitution. This Court has recognized that the West Virginia Constitution may require higher standards of protection than the federal constitution in due process cases. Without some explicit authority, the Circuit Court may not issue an order permitting involuntary medication.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

This case involves an issue of first impression regarding an inherent Constitutional right. The courts of this State have received no guidance or authority on the issue of involuntary medication. The *Sell* case involves the United States Constitution but only the West Virginia Supreme Court of Appeals can analyze the standards under the West Virginia Constitution. The petitioner requests an argument under Rule 20 due to the novel and fundamental Constitutional issue involved.

ARGUMENT

The Circuit Court Order was based on the standards set by the United States Supreme Court in *Sell v. United States*, 539 U.S. 166, 123 S.C. 2174 (2003). *Sell* involved a federal prosecution where the government sought to medicate a mentally ill defendant for the purpose of gaining competency. The *Sell* opinion held that the government could not medicate the defendant but also set forth standards under which involuntary medication could be ordered. The Supreme Court found a right to refuse medical treatment under the Fifth Amendment to the United States Constitution. The opinion sets forth a four-part test which the government would have to satisfy to justify involuntary medication.

Necessity for Writ of Prohibition

There is no judicial authority in West Virginia permitting involuntary medication for this purpose of obtaining competency to stand trial. This Court has never adopted or cited *Sell*. The West Virginia Constitution contains broader protections for personal privacy and due process than found in the Fifth and Fourteenth Amendments to the United States Constitution.

This Court may find that involuntary medication is never permitted under the West Virginia Constitution. It may also find that higher standards are necessary to meet the requirements of the West Virginia Constitution.

This Court has established the requirements for the issuance of a writ of probation. "Prohibition lies only to restrain inferior courts from proceedings in causes over which they have no jurisdiction, or, in which, having jurisdiction, they are exceeding their legitimate powers, and may not be used as a substitute for [a petition for appeal] or certiorari." Syllabus. Point. 1, *Crawford v. Taylor,* 138 W.Va. 207, 75 S.E.2d 370 (1953); Syllabus Point 3, *Hoover v. Berger,* 199 W. Va. 12, 483 S.E.2d 12 (1996). The petitioner claims that the Court has no authority to enter an Order permitting involuntary medication for the purpose of restoring a criminal defendant to competency. No West Virginia case deals with this issue or provides a trial court with this authority. The Court is exceeding its legitimate powers.

If this Court determines that the Circuit Court does have authority to issue an involuntary medication Order, it should still issue a writ due to the fundamental constitutional issues at stake which would not be adequately protected by a post-conviction appeal.

> In determining whether to entertain and issue the writ of prohibition for cases not involving an absence of jurisdiction but only where it is claimed that the lower tribunal exceeded its legitimate powers, this Court will examine five factors: (1) whether the party seeking the writ has no other adequate means, such as direct appeal, to obtain the desired relief; (2) whether the petitioner will be damaged or prejudiced in a way that is not correctable on appeal; (3) whether the lower tribunal's order is clearly erroneous as a

> matter of law; (4) whether the lower tribunal's order is an oft repeated error or manifests persistent disregard for either procedural or substantive law; and (5) whether the lower tribunal's order raises new and important problems or issues of law of first impression. These factors are general guidelines that serve as a useful starting point for determining whether a discretionary writ of prohibition should issue. Although all five factors need not be satisfied, it is clear that the third factor, the existence of clear error as a matter of law, should be given substantial weight.

Syllabus Point 4, *Hoover v. Berger*, *id.*

This petition easily meets the requirements for a discretionary appeal. Mr. Urban has no other adequate means to obtain the desired relief. The only way to prevent involuntary medication of Mr. Urban is an order from this Court prohibiting the Circuit Court's order. The petitioner would be damaged and prejudiced by forced medication in a way that could never be remedied by an appeal after a presumed conviction at some uncertain future date. The Circuit Court's order is not based on any West Virginia statute or case. It cites only a U.S. Supreme Court opinion in a federal case. The requirements of the West Virginia Constitution are not adequately addressed in the order. There was testimony at the hearing that Sharpe Hospital has recently sought several orders for involuntary medication. These motions are being heard and granted without guidance from this Court. Involuntary medication is a matter of first impression involving a fundamental Constitutional right.

A writ of prohibition is the only procedure under which the legality of the Court's forced medication order can be determined in a timely manner which protects Mr. Aaron's rights. The *Sell* case contains a relevant discussion in which the Court found that the issue of involuntary medication was appropriate for a pre-trial collateral appeal and order. The factors used in *Sell* were whether the collateral order would "(1) conclusively determine the disputed question, (2) resolve an important issue completely separate from the merits of the action, and (3) is effectively unreviewable on appeal from a final judgment." 539 U.S. at 176, 123 S.Ct. at 2182.

In federal court, involuntary medication orders are reviewable in pre-trial appeals under *Sell.* For the same reason, it is necessary for the Court to issue this writ in Order to determine whether forced medication is permissible under the West Virginia Constitution and what standards apply.

West Virginia Constitution

The West Virginia Constitution contains greater liberty and due process protections than the United States Constitutions. The language of these greater protections is directly applicable to the issues in this case.

The due process clause of the Fifth Amendment states "nor shall [any person] be deprived of life, liberty, or property, without due process of law." The Fourteenth Amendment, which applies to the states, contains identical language.

The West Virginia Constitution contains broader protections.

West Virginia Constitution Article 3 § 1 states: "All men are, by nature, equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity, namely: The enjoyment of life and liberty, with the means of acquiring and possessing property, and of pursuing and obtaining happiness and safety."

West Virginia Constitution Article 3 §10. states: "No person shall be deprived of life, liberty, or property, without due process of law, and the judgment of his peers."

Section One adds to the Fifth Amendment protection of life liberty and property. It specifically adds "pursuing and obtaining happiness and safety." Section Ten adds jury trial protection to our due process clause.

The additional language in the West Virginia Constitution is directly relevant to the issue in this case. The inherent right "of pursuing and obtaining happiness and safety" is directly applicable to making one's own medical decisions, including the right to refuse medication. Every person has a right to decide whether to take medication according to their own choices about the impact it would have on their happiness and safety.

This Court has explicitly recognized the higher level of due process protections provided by the West Virginia Constitution. "The provisions of the Constitution of the State of West Virginia may, in certain instances, require higher standards of protection than afforded by the Federal Constitution." Syllabus Point 2, *Pauley v. Kelly,* 162 W.Va. 672, 255 S.E.2d 859 (1979)." Syl. Pt. 1, *State v. Bonham,* 173 W.Va. 416, 317 S.E.2d 501 (1984); Women's Health Ctr. of W. Virginia, Inc. v. Panepinto, 191 W. Va. 436, 438, 446 S.E.2d 658, 660 (1993).

> This principle was explained by Justice Workman in the *Panepinto* case:
> The provision of enhanced guarantees for "the enjoyment of life and liberty ... and safety" by our state constitution both permits and requires us to interpret those guarantees independent from federal precedent. W.Va. Const. art. III, § 1. Accordingly, we are not bound by federal precedent in interpreting issues of constitutional law arising from these enhanced guarantees. *See Bonham,* 173 W.Va. at 418, 317 S.E.2d at 503. Furthermore, because we are permitted to elevate our constitutional protections, we are similarly free to reject federal precedent such as *Harris. See* 448 U.S. 297, 100 S.Ct. 2671. We do just that today.

Id. at 442, 446 S.E.2d at 664.

The *Panepinto* case is directly on point because it involved a medical decision, Medicaid funding of medically necessary abortion. The Court found that government involvement in this medical issue fell under the "safety" protection guaranteed by the West Virginia Constitution. *Id.* at 443, S.E.2d at 665.

A 1915 West Virginia opinion provides an expansive description of the protections provided under the West Virginia Constitution. The case involved a criminal defendant committed to a West Virginia Hospital for what would appear to be an incompetency finding.

> The term 'liberty,' as used in the Constitution, is not dwarfed into mere freedom from physical restraint of the person of the citizen, as by incarceration, but is deemed to embrace the right of man to be free in the enjoyment of the faculties with which he has been endowed by his Creator, subject only to such restraints as are necessary for the common welfare. 'Liberty,' in its broad sense, as understood in this country, means the right, not only of freedom from servitude, imprisonment, or restraint, but the right of one to use his faculties in all lawful ways, to live and work where he will, to earn his livelihood in any lawful calling, and to pursue any lawful trade or avocation.

Lawrence v. Barlow, 77 W. Va. 289, 87 S.E. 380 at 381 (1915).

The description of the liberty right in *Lawrence v. Barlow* has direct application to Mr. Urban's case. The case recognizes that a person has the right to be free in their own thoughts and the operation of their mind. Medications such as paliperidone are designed precisely to affect the operation of a patient's mind. Mr. Urban has an inherent right to be free in the enjoyment of his faculties. The West Virginia Constitution could be read to determine that this right is inviolate and not subject to exceptions such as medication to restore competency. It could also be read to require a higher standard than provided in the *Sell* case.

Constitutional Right to Refuse Treatment

The *Sell* case clearly recognizes a right to refuse medication under the Due Process clause of the Fifth Amendment. "[A}n individual has a significant constitutionally protected liberty interest in avoiding the unwanted administration of antipsychotic drugs." *Sell*, 539 U.S. at 177, 123 S.Ct. at 2183. This case establishes the minimal Constitutional standards which must be honored by the State of West Virginia.

West Virginia Code § 27-6A-10(b) states:

> (b) An individual with health care decision-making capacity may refuse medications or other management unless court-ordered to be treated, or unless a treating clinician determines that medication or other management is necessary in emergencies or to prevent danger to the individual or others: *Provided,* That medication management intended to treat an individual's condition that causes or contributes to incompetency shall constitute treatment.

This provision recognizes an individual's right to refuse medication. It provides an exception for emergencies and when "court-ordered to be treated." The statute does not set out the standards and procedures for such a court order. But any court order would have to comply with the protections of the United States and West Virginia Constitutions.

The case of *State ex rel White v. Narick*, 170 W.Va. 195, 292 S.E.2d 54 (1982), dealt with similar concerns to forced medication. In *Narick,* the Court held that the State was permitted to force-feed a hunger striking inmate to prevent his death. The *Narick* case was actually moot by the time an opinion was issued because the inmate had ended the hunger strike by his own choice. The opinion acknowledged the Constitutional right to refuse medical treatment. In finding that a prison was permitted to force-feed the inmate, it held the prisoner's privacy rights were outweighed by the state's interest in keeping him alive. This case provides the most extreme example of when the State's interest is important enough to overcome an individual's privacy rights. Mr. Urban's case is not a matter of life and death. The proposed medication is not necessary to keep him alive. It is only intended to produce a mental state under which he might be tried and convicted for a crime.

The *Sell* case contained four requirements which must be decided on a case by case basis:

1. Court must find that important governmental interests are at stake.
2. Court must find that administration of the drugs is substantially likely to render the defendant competent to stand trial.

3. Court must find that involuntary medication is necessary.

4. Court must find that administration of the drugs is medically appropriate.

Id. at 180-81, 123 S.Ct. at 2184-85.

The petitioner requests that this Court establish that the West Virginia Constitution requires greater protections than the factors discussed in the *Sell* case. West Virginia Code § 27-6A-10(b) permits involuntary medication "in emergencies or to prevent danger to the individual or others." The *Narick* case held that the State could force-feed an inmate to prevent him from starving to death. These urgent circumstances are the types of compelling state interests necessary to overcome an individual's right to their own bodily integrity.

The competency statute provides for the safety of the community in cases where a person is declared incompetent to stand trial. When the defendant is charged with a crime of violence, they can remain committed to a mental health facility and may only be released if the Court finds they will not be a danger to the community. This mitigates against the idea that there is an important state interest requiring forced medication in order to hasten a criminal trial. The safety of the community is not dependent on a criminal trial.

CONCLUSION

The petitioner, Aaron Jimmie Urban, requests that this Court issue a rule to show cause to the respondent judge of the Kanawha County Circuit Court, requiring that the respondent show cause as to the legal basis under the West Virginia Constitution for the involuntary medication order.

VERIFICATION

I, John Sullivan, verify that the contents of this petition for a writ of prohibition are true and accurate to the best of my knowledge.

John Sullivan

CERTIFICATE OF SERVICE

I, John Sullivan, hereby certify that on September 24, 2024 a copy of this Appendix record was served on the following parties through the Court's e-file system.

Judge David Hardy
Kanawha County Circuit Court
111 Court Street
Charleston, WV 25301

Ryanne Ball
Assistant Prosecuting Attorney
301 Virginia Street E
Charleston, WV 25301

Office of the Attorney General
Appellate Division
Room E-26,
1900 Kanawha Blvd. East
Charleston WV 25305.

John Sullivan
Deputy Chief Public Defender
P.O. Box 2827
Charleston, WV 25301
Bar No. 6808
304-348-2323
jsullivan@wvdefender.com