IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Appeal No. 24-547

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STATE OF WEST VIRGINIA ex rel.
AARON JIMMIE URBAN,

Petitioner,

v.

HONORABLE DAVID HARDY,
Judge of the Circuit Court of Kanawha County

Respondent.

BRIEF OF RESPONDENT

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INTRODUCTION

Petitioner Aaron Urban was deemed incompetent to stand trial by the Circuit Court of Kanawha County and ordered to undergo inpatient competency restoration services. After months of treatment noncompliance, and following a request by Petitioner's treatment team, the circuit court ordered the involuntary administration of medication for the purposes of competency restoration. Petitioner seeks a writ of prohibition to prevent the enforcement of the circuit court's order, arguing that the circuit court exceeded its authority. He further asks this Court to find that the state constitution affords him greater protection against involuntary medication than the federal constitution.

The circuit court did not exceed its authority under state law, nor did it err in applying federal standards established by the United States Supreme Court for allowing the involuntary administration of medication to restore a criminal defendant's competency to stand trial. Furthermore, the federal standard does not conflict with the West Virginia Constitution, as it safeguards even those rights that would exist only under the most expansive interpretation of the state constitution. Accordingly, this Court should deny the writ of prohibition.

QUESTIONS PRESENTED

Petitioner presents three questions:

> (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 Constitution?

Pet'r's Br. 1.

STATEMENT OF THE CASE

In January 2023, Petitioner was indicted for first-degree robbery, use or presentment of a firearm during the commission of a felony, fleeing with reckless indifference to the safety of others, child neglect creating a substantial risk of serious bodily injury or death, grand larceny, and misdemeanor prohibited person in possession of a firearm. App. 4. On May 5, 2023, Petitioner failed to appear for arraignment, resulting in a capias warrant being issued. Resp't's App. 6. Petitioner was later apprehended and appeared for arraignment on July 19, 2023; however, Petitioner's statements to the court raised concerns about his competency, and, therefore, the court continued the arraignment. Resp't's App. 9.

On July 21, 2023, Petitioner's counsel filed a motion for a competency evaluation due to concerns that Petitioner "may have mental health issues which impact his ability to understand the legal issues in his case and participate in his own defense." App. 5. Shortly thereafter, the court ordered Petitioner to undergo a competency evaluation at Clayman & Associates, PLLC. Resp't's App. 14-16. On November 15, 2023, a hearing was held wherein the evaluator, Steven Cody, Ph.D., testified regarding the results of Petitioner's competency evaluation. App. 7-9. During the hearing, Dr. Cody was presented with a letter authored by Petitioner. App. 7. The letter raised additional concerns for Dr. Cody, prompting Petitioner's counsel to move for a supplemental evaluation, which the court granted. App. 7.

On January 8, 2024, another hearing was held on Petitioner's competency. The court found, based on the evaluations, that Petitioner was not competent to stand trial and ordered him committed to William R. Sharpe Hospital ("Sharpe Hospital") for a period of 90 days for competency restoration services. App. 10-13. On February 26, 2024, counsel for Petitioner filed a motion to permit Petitioner to proceed self-represented. Resp't's App. 22-24. Counsel noted that the motion was filed "at the express request of [Petitioner]." Resp't's App. 24. In the motion,

counsel notes that Petitioner filed multiple motions and pleadings without counsel's involvement, including two recent filings wherein Petitioner expressed a desire to represent himself. Resp't's App. 22-23.

Despite Petitioner being in the process of competency restoration, the circuit court nonetheless held a hearing on the motion to allow Petitioner to address the court. Resp't's App. 55-83. Petitioner's statements to the court can, at best, be described as meandering and convoluted. Resp't's App. 60-73. Petitioner expressed his intention to raise defenses of selective prosecution and entrapment, and claimed that the psychologist "badger[ed]" him to acquire information about his defenses. Resp't's App. 64-66. He alleged that the psychologist's actions were aimed at providing the prosecution with a strategic advantage, contending that the State opposed his self-representation because if he were allowed to represent himself, he would become "unpredictable," which would threaten the State's ability to secure a conviction. Resp't's App. 66-67. Additionally, Petitioner asserted that he never retained his counsel but had refrained from firing him as he believed such action would imply an admission of having retained him in the first place. Resp't's App. 67-68.

The court ultimately denied Petitioner's motion, finding that self-representation required competency, and "based on the evidence in front of the [c]ourt today, [Petitioner doesn't] have [the] mental competency to make [the] decision [to represent himself]." Resp't's App. 74. Despite the court's denial of Petitioner's request to proceed self-represented, both during the hearing and in its written order, it indicated that the issue would be reconsidered if Petitioner were to regain competency. Resp't's App. 28, 75-78.

Following this denial, Petitioner continued to file letters, motions, and notices with the circuit court. Resp't's App. 4-5. On May 31, 2024, Petitioner filed a letter with the circuit court

notifying it of his intention to seek a writ of prohibition. Resp't's App. 31-33. In the letter, Petitioner alleged he was being targeted by individuals appointed by Governor Justice due to his political affiliations. Resp't's App. 31-32. He further claimed that his counsel was "unauthorized" and "ineffective" in addressing ongoing violations of his rights by the court and other officials involved in his proceedings. Resp't's App. 32. In July 2024, Petitioner filed a notice of appeal with the circuit court, alleging that despite counsel being unauthorized to represent him, counsel continued to act on his behalf without his consent, including requesting both the initial and supplemental evaluation. Resp't's App. 36-54. Additionally, Petitioner claimed that the psychologist disregarded his invocation of his *Miranda* rights during the evaluation, continuing the evaluation, and "slandering [his] character and defense." Resp't's App. 41. Sporadically mixed into the notice of appeal were pages from the evaluation with significant portions redacted, a previously-filed motion to quash, and an initial appearance form from magistrate court. Resp't's App. 43-44, 46-47, 52-54.

Meanwhile, on June 13, 2024, following a request by the Chief Medical Officer at Sharpe Hospital, the court entered an Order Granting Extension of Time to Attain Competency. App. 16-17. Petitioner was ordered to remain hospitalized to receive additional competency restoration services until September 14, 2024. Resp't's App. 17.

On August 14, 2024, Petitioner filed, as a self-represented litigant, an original jurisdiction petition for a writ of prohibition. Petition for Writ of Prohibition, *State of West Virginia ex rel., Aaron Jimmie Urban v. State of West Virginia and Honorable David J. Hardy*, No. 24-453 (W. Va. Supreme Court, Aug. 14, 2024). He asserted that the circuit court exceeded its authority by continuing his arraignment and denying his motion to represent himself and he sought relief in the form of being released from custody. This matter remains pending before the Court.

On or around August 8, 2024, Sharpe Hospital sought court approval to involuntarily administer medication to Petitioner to restore his competency. App. 18-19. Petitioner was admitted to Sharpe Hospital on March 14, 2024, and diagnosed with Delusional Disorder. App. 23 While at Sharpe Hospital, Petitioner frequently claims he is being targeted and abused by staff and continually files grievances. App. 22. Although the treatment team believed medication would be beneficial, it was not prescribed because Petitioner declined, but expressed openness to participating in other services. App. 21. Eventually, Petitioner agreed to take medication, but after a very brief period of compliance, he began refusing it again. App. 22. While Petitioner initially attended competency education sessions, he refused to attend any classes after May 16, 2024, and refused to comply with a competency evaluation at the end of his first 90 days. App. 21. Petitioner also exhibited some behavioral issues, including being involved in a physical altercation with a patient that led to him being restrained. App. 21. He was later moved to a different unit after allegations of a sexual nature were made against him by another patient. App. 21. Ultimately, it was the opinion of his treatment team that without medication Petitioner's competency could not be restored. App. 21.

A detailed medication treatment plan was offered in the event the court ordered the involuntary administration of medication. App. 22-23. The plan recommended administering paliperidone, an antipsychotic, via intramuscular injections, with three total injections required in the first 40 days, followed by once-monthly injections thereafter. App. 22. Potential side effects were noted as nausea, headache, vomiting, constipation, and weight gain, which in most cases are limited.[1] App. 22.

[1] Although the treatment plan included a second medication option in the event paliperidone proved unsuccessful, Dr. Aynampudi later testified that there was only time to implement the first

On September 19, 2024, an evidentiary hearing was held wherein Petitioner appeared with his counsel. Tr. 1-3. [2] Achuta Aynampudi, M.D., testified in support of the request to involuntarily medicate Petitioner, and Petitioner testified on his own behalf. Tr. 7-37. Dr. Aynampudi's testimony aligned with the treatment summary previously submitted to the court, emphasizing that Petitioner's competency could not be restored without medication. Tr. 14.

Dr. Aynampudi elaborated on how Petitioner's persecutory delusions impact his daily functioning, noting that these delusions drive the numerous grievances and lawsuits he has filed against the hospital and its staff, stemming from his belief that they are targeting him. [3] Tr. 15-17. He testified that the proposed medication, paliperidone, is an antipsychotic, with some potential side effects, including gastrointestinal symptoms, headache, and dry mouth; however, he noted that these typically resolve within a few days. Tr. 20-21. He testified that paliperidone is frequently prescribed at Sharpe Hospital and he was not aware of any patient experiencing serious side effects. Tr. 22.

Dr. Aynampudi testified that the medication was substantially likely to restore Petitioner's competency to stand trial, and that any potential side effects would not hinder Petitioner's ability to assist his counsel. Tr. 22. He explained that there were no less intrusive treatment options available, as Petitioner refused all alternatives, and the use of paliperidone was medically

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medication option before Petitioner reached the statutory maximum period for competency restoration services. Tr. 12-13.

[2] Respondent will cite to the transcripts supplemented by Petitioner using "Tr."

[3] On August 7, 2024, Petitioner filed a self-represented civil rights complaint pursuant to 42 U.S.C. § 1983 in the Northern District of West Virginia naming William R. Sharpe Hospital, West Virginia Department of Health and Human Services, West Virginia Department of Health Facilities, Pat Ryan, CEO of Sharpe Hospital, Sheree T. Gruber, APRN-CNP, and Achuta R. Aynampudi, M.D. *Aaron Jimmie Urban v. William R. Sharpe, Jr. Hospital et al.*, No. 5:24-CV-153 (N.D. W. Va. Aug. 7, 2024). On September 4, 2024, Petitioner filed an Emergency Motion for Restraining Order in the district court naming as defendants the same individuals in his Section 1983 complaint and adding Rick Dempsey, Mental Health Ombudsman. *Id.*

appropriate. Tr. 22. He advised that an intramuscular injection was the only option given the nature of the medication, as the only other option was an oral medication in the form of a capsule which could not be crushed because that would alter its absorption. Tr. 27.

Petitioner testified that he was refusing medication because he believed he was misdiagnosed with delusional disorder. Tr. 29. He asserted that this diagnosis was being used to undermine his defense of selective prosecution, and relayed having filed "electronic reports with the FBI and Department of Justice" regarding events that occurred in his community. Tr. 32. Upon further questioning, Petitioner maintained that what medical personnel considered delusions were real events. Tr. 33. He also claimed that after filing his federal lawsuit, he was denied access to the library, which confirmed staff were retaliating against him. Tr. 34. Regarding medication, Petitioner testified that he took Invega[4] once, but experienced drowsiness, leading him to refuse further doses. Tr. 35.

Over the objection of Petitioner, the circuit court ordered that Petitioner be involuntarily administered medication if he refused to voluntarily take the prescribed medication. App. 24-27. In reaching its decision, the court applied the four-part test laid out in *Sell v. United States*, 539 U.S. 166, 180-81 (2003). App. 25-26. Under the first prong, the court found that restoring Petitioner's competency to stand trial was an important governmental interest. App. 25-26. Regarding the second prong, the court determined that the involuntary administration of medication would significantly further that interest based on the significant likelihood that it would expeditiously render Petitioner competent to stand trial and assist in his own defense. App. 25-26. Concerning the third prong, The court found that Petitioner had been non-compliant with treatment, and that involuntary medication was the least restrictive means of achieving the goal of

[4] Invega is the brand name of paliperidone.

competency restoration. App. 26. Lastly, under the fourth prong, the court found that involuntary administration of medication was in Petitioner's best interest and medically appropriate. App. 25. The court also ordered that competency restoration services be extended until November 8, 2024. App. 26.

It is from this order that Petitioner now seeks a writ of prohibition.

SUMMARY OF ARGUMENT

When examining a petition for a writ of prohibition, the most significant factor in determining if the writ should lie is whether the lower court's order is clearly erroneous as a matter of law. The circuit court did not exceed its authority in ordering the involuntary administration of medication nor did it err in its application of the *Sell* test established by the United States Supreme Court, which outlines four factors that must be met to involuntarily medicate a defendant for competency restoration. Because the circuit court did not exceed its authority, nor did it err in its application of the law, it is impossible for the order to be clearly erroneous and, on this significant factor alone, Respondent prevails.

The circuit court's order is not only free from clear error, but it is also consistent with the court's duty to ensure the fair administration of justice under both the federal and state constitutions. Under the West Virginia Constitution, the circuit court is granted broad jurisdiction over criminal cases. Inherent to that authority is the obligation to implement statutory laws, including West Virginia's criminal competency statutes. These statutes require a court, upon finding a defendant incompetent to stand trial but likely to attain competency, to order treatment in accordance with the statutory goal of restoring competency. The circuit court, in fulfilling this obligation, and as a last resort, lawfully exercised its authority to order the involuntary administration of medication.

Furthermore, the order does not violate Petitioner's constitutional rights, as the circuit court properly applied United States Supreme Court precedent as set forth in *Sell*, which held the involuntary administration of medication for competency restoration to be constitutional if justified under its four-part framework. Importantly, the *Sell* test does not conflict with the state constitution, as its rigorous framework safeguards even those rights that could arguably extend beyond those recognized in the federal constitution. The circuit court undertook a careful analysis of each prong in light of the facts of the case and the uncontroverted testimony of Petitioner's treating psychiatrist, and properly concluded that the state met its burden.

Consequently, the circuit court did not exceed its legitimate authority and did not err as a matter of law by ordering Petitioner to be involuntarily medicated for the purpose of restoring his competency to stand trial. Therefore, this Court should deny Petitioner's writ of prohibition

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Oral argument is unnecessary in this case as the facts and legal arguments are adequately presented in the briefs and record on appeal, and the decisional process would not be significantly aided by oral argument. Consequently, this case is suitable for disposition by memorandum decision. W. Va. R. App. P. 18(a)(3) and (4). A writ should not lie.

STANDARD OF REVIEW

"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." Syl. pt. 3, *State ex rel. Hoover v. Berger*, 199 W. Va. 12, 483 S.E.2d 12 (1996) (quoting syl. pt. 1, *Crawford v. Taylor*, 138 W. Va. 207, 75 S.E.2d 370 (1953)). This Court considers five "general guidelines" when determining whether the lower court's decision meets that standard and a writ should issue:

> (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.

Id. at syl. pt. 4.

ARGUMENT

Petitioner cannot sustain his burden in meeting each of the *Hoover* factors sufficient for a writ to lie, particularly because he cannot show clear error of law.

Petitioner must show that he can meet the *Hoover* factors in order to obtain writ relief; he cannot. This Court has articulated that the third factor, "whether the lower tribunal's order is clearly erroneous as a matter of law," "should be given substantial weight." *State ex rel. Nelson v. Frye*, 221 W. Va. 391, 395, 655 S.E.2d 137, 141 (2007). Here, the circuit court's order to involuntarily administer medication to restore Petitioner's competency is not clearly erroneous as a matter of law. On the contrary, the circuit court followed established United States Supreme Court precedent set forth in *Sell*, and after hearing testimony found all four parts of Sell were met. 539 U.S. at 180-81; App. 25-26; Tr. 45-46. Furthermore, the circuit court complied with West Virginia Code § 27-6A-1 *et seq*. which aims to restore a defendant's competency when they have been deemed incompetent to stand trial but likely to regain competency. W. Va. Code § 27-6A-3(d).

Notably, Petitioner does not reference any specific statute or legal precedent that the circuit court's order violates. Instead, he makes broad and conclusory assertions that the West Virginia Constitution affords greater protection than the federal constitution. Yet, despite this assertion, Petitioner fails to make any substantive argument explaining how the *Sell* test does not adequately address the additional protections he claims are provided under the state constitution. Petitioner's

failure to present a compelling argument reflects the reality that the *Sell* test provides robust protections of individual liberty, allowing for infringements only under the most limited circumstances when all four prongs of the test have been met.

Not all *Hoover* factors need be satisfied here, but it is clear that the most important one, clear error of law, has been met. Syl. pt. 4, *Hoover*, 199 W. Va. 12, 483 S.E.2d 12. There is no evidence this is an oft-repeated error, meaning Petitioner cannot satisfy the fourth factor. Additionally, the fifth factor, whether the lower tribunal's order raises new and important problems or issues of law of first impression, also favors Respondent. Although involuntary medical treatment for the purposes of competency restoration has not been specifically addressed by this court, the overarching issue, the right to refuse medical treatment, is not a new issue and has long been addressed by the West Virginia Legislature, and even by this Court.

As the circuit court acted within its authority and consistent with legal precedent, prohibition does not lie, and this Court should deny the writ of prohibition.

A. The circuit court acted within its authority in ordering the involuntary administration of medication because the circuit court has an obligation under West Virginia's criminal competency statute to make efforts to restore Petitioner's competency to stand trial.

Petitioner argues that the circuit court lacked the authority to order him to be involuntarily medicated to restore his competency to stand trial. Pet'r's Br. 4. While there is no case law incapsulating this precise fact pattern, the circuit court's inherent authority—rooted in the West Virginia Constitution, as well as its authority under West Virginia Code § 27-6A-1 *et seq.*, and in alignment with the United States Constitution—grants it the ability to order an incompetent defendant be involuntarily medicated.

"[T]he scope of a circuit [court] judge's jurisdiction is broad-based," *Carey v. Doster*, 185 W. Va. 247, 252, 406 S.E.2d 678, 683 (1991), and circuit courts are the courts of original and

general jurisdiction in criminal cases, W. Va. Const. art. VIII, § 6; W. Va. Code § 51-2-2(c). In exercising jurisdiction over criminal cases, courts must adhere to statutory laws and give effect to legislative intent. *State v. Whetzel*, 200 W. Va. 45, 48, 488 S.E.2d 45, 48 (1997). West Virginia Code § 27-6A-3 *et seq*. governs how courts are to proceed in matters involving the competency of a defendant to stand trial. West Virginia Code § 27-6A-3(d) specifically addresses competency restoration services, requiring that upon a defendant being deemed incompetent to stand trial but likely to attain competency, the court "shall . . . upon the evidence, make further findings as to whether the defendant, in order to attain competency, should receive outpatient competency restoration services or if the attainment of competency requires inpatient management in a mental health facility or state hospital."

The statutory language clearly reflects the Legislature's intent of the goal to restore a defendant's competency to stand trial, an aim this Court has recognized by finding that "the state has a legitimate interest in not only determining the competency of a defendant to stand trial. . . . [But the state also] needs to be afforded an opportunity to restore the defendant's competency so that he may stand trial." *State ex rel. Walker v. Jenkins,* 157 W. Va. 683, 689, 203 S.E.2d 353, 357 (1974). Thus, within this framework and consistent with the Legislature's intent, the circuit court possesses the authority to order the involuntary administration of medication for the purposes of competency restoration.

Importantly, this authority operates within the broader context of the Legislature's determination that the right to refuse treatment, including medication, is not absolute. *See* W. Va. Code R. § 64-59-8.5[5] (providing that when an individual has been involuntarily committed to a

[5] *See* H.B. 2427, 2021 Leg., Reg. Sess. (W. Va. 2021). "A regulation that is proposed by an agency and approved by the Legislature is a 'legislative rule' as defined by the State

state-operated mental health facility and the "involuntarily committed patient rejects any proposed treatment and all attempts at negotiating an acceptable alternative have failed, then the most conservative, least intrusive treatment approach . . . under the applicable standard of care . . . and which produces minimal potential side effects may be imposed over the objections of the patient[.]"); recognized by *Donnellan v. United Summit Ctr.*, No. 2:08-CV-93, 2009 WL 10676022 (N.D. W. Va. Oct. 9, 2009) (finding W. Va. Code R. § 64-59-8 "provides for a circumstance under which treatment may be imposed over the objections of the client"); *see also*, W. Va. Code §§ 27-5-11(3) to (5) (authorizing a court in specific circumstances to order that an individual take prescribed medication). Beyond the broad recognition that medication refusal is not absolute, West Virginia Code § 27-6A-10(b) specifically addresses a court's authority to order an individual committed for competency restoration services to take medication providing:

> [a]n individual with health care decision-making capacity may refuse medications . . . *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 . . . [and] medication management intended to treat an individual's condition that causes or contributes to incompetency shall constitute treatment."

(Emphasis added).

Not only does the statutory language authorize a circuit court to order a defendant deemed incompetent to stand trial to take medication, but it also does so regardless of the person's capacity to make healthcare decisions. Furthermore, the use of the disjunctive "or" that separates the court's authority from that of a medical provider establishes that the court's authority is not restricted to emergencies or to prevent danger. "[W]here the disjunctive 'or' is used, it ordinarily connotes an alternative between the two [or more] clauses it connects" and "indicates the various objects with

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Administrative Procedures Act, . . ., and such a legislative rule has the force and effect of law." Syl pt. 5, *Smith v. W. Va. Hum. Rts. Comm'n.*, 216 W. Va. 2, 602 S.E.2d 445 (2004).

which it is associated are to be *treated separately*." *State v. Saunders*, 219 W. Va. 570, 574, 638 S.E.2d 173, 177 (2006) (internal quotations omitted) (emphasis added).

The circuit court's authority to issue an order for involuntary medication administration is underscored by both its broad jurisdiction in criminal matters and the specific provisions outlined in the West Virginia Code regarding competency restoration. While the right to refuse treatment is significant, it is not absolute, and can be overcome without violating constitutional rights. Accordingly, the circuit court did not exceed its legitimate authority.

B. Petitioner's due process rights under the West Virginia Constitution are protected under the *Sell* test and adopting the *Sell* test is consistent with this Court's long history of adopting, without expansion, the same rights and protections afforded criminal defendants under the United States Constitution.

Petitioner argues that in the event this Court finds that a circuit court has the statutory authority to order a criminal defendant to be involuntary administered medication for the purposes of competency restoration, it should find that such authority is unconstitutional, upon Petitioner's claim that the West Virginia Constitution affords greater protection than those required under the *Sell* test. Pet'r's Br. 6-7. Despite asserting that the state constitution provides greater protection, Petitioner's argument is devoid of any analysis as to how the *Sell* test falls short or what procedures should be implemented to afford due process under the state constitution. As the *Sell* test provides robust protections in alignment with those afforded under the West Virginia Constitution, this Court should decline Petitioner's invitation to expand those protections.

It is without question that the administration of medication against a person's will implicates a "liberty" interest protected under the United States Constitution and the West Virginia Constitution; however, even the most fundamental rights must at times give way to important governmental interests. *See Rohrbaugh v. State*, 216 W. Va. 298, 308, 607 S.E.2d 404, 414 (2004) (statute prohibiting individuals who have been involuntary committed from possessing a firearm

did not violate state or federal constitutions). Although one has a significant liberty interest in avoiding the unwanted administration of antipsychotic drugs, the right to refuse treatment, just like the right to bear arms, is not absolute. *See Harper v. Washington*, 494 U.S. 210, 211 (1990) (holding the due process clause was not violated by administering medication to an inmate against his will if he posed a danger to himself or others and the treatment was in the inmates best interest); *Riggins v. Nevada*, 504 U.S. 127, 135 (1992) (a pretrial detainee can be involuntarily administered medication if the court determines that the medication is medically appropriate, and considering less intrusive alternatives, was necessary for the detainee's safety or the safety of others.).

Additionally, following *Harper* and *Riggins*, the United States Supreme Court in *Sell* addressed the very question at issue in this case: whether it is constitutional, and if so, what level of due process is required, to involuntarily administer medication to a defendant deemed incompetent to stand trial in order to restore his competency to stand trial. The Supreme Court answered in the affirmative and set forth a four-part test under which the involuntarily administration of medication for the purposes of competency restoration would be constitutionally permissible.

Like the Due Process Clause in the federal constitution, "[t]he Due Process Clause, Article III, Section 10 of the West Virginia Constitution requires procedural safeguards against State action which affects a liberty or property interest." Syl. pt. 2, *State v. Barnhart*, 211 W. Va. 155, 563 S.E.2d 820 (2002). This Court considers three general factors when determining the specific procedures necessary to protect a liberty interest:

> "[F]irst, the private interest that will be affected by state action; second, the risk of an erroneous deprivation of the protected interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and third, the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail."

Syl. pt. 5, *Major v. DeFrench,* 169 W. Va. 241, 286 S.E.2d 688 (1982). These factors closely align with the four prongs of the *Sell* test.

First under *Sell*, the defendant's liberty interest in refusing medical treatment is paramount as the Court emphasized "that an individual has a significant constitutionally protected liberty interest in avoiding the unwanted administration of antipsychotic drugs." *Sell*, 539 U.S. at 178 (internal quotations omitted). Next, the first prong of *Sell*, the government must have an "important . . . interest at stake," which not only considers the state's interest in prosecuting crimes but the individual facts of the case, including the seriousness of the offense as well as the length of hospitalization in light of the sentence he could receive if convicted. *Id.* at 180. Lastly, the second, third, and fourth prongs of *Sell* require a determination that administering the medication is substantially likely to render the defendant competent for trial, substantially unlikely to produce side effects negatively affecting a defendant's ability to assist counsel, that no less intrusive means exist to achieve the same outcome, and that the medication is appropriate and in their best interest. *Id.* at 181. Together these procedures safeguard against the risk of an erroneous deprivation of the right to refuse medication. The rigorous demands of the *Sell* test adhere to the requirements of due process afforded under the West Virginia's Constitution, and therefore, require no expansion.

Beyond referencing article III, section 10, Petitioner relies on article III, section 1 to support his argument that the state constitution affords greater protection than those provided under *Sell*. Specifically, Petitioner cites to the "inherent right of pursuing and obtaining happiness and safety." Pet'r's Br. 7-8 (internal quotations omitted). Petitioner cites three cases as supporting his contention; however, his reliance is misplaced.

First, Petitioner cites to *Panepinto*, which he inexplicably claims is "directly on point," and its reference to the right to "safety" under article III, section 1. Pet'r's Br. 7; *Women's Health Ctr.*

v. Panepinto, 191 W. Va. 436, 441-42, 446 S.E.2d 658, 663-64 (1993).[6] Insofar as it applies to the instant case, the right to "safety" raised in *Panepinto* involved low-income woman being denied medically necessary services, which negatively impacted their health and safety and resulted in "forced compliance with legislated reproductive policy." *Id.* at 445, 446 S.E.2d at 667. In finding the statute unconstitutional, the Court held that "when state government seeks to act for the common benefit, protection and security of the people in providing medical care for the poor, it has an obligation to do so in a neutral manner so as not to infringe upon the constitutional rights of our citizens." *Id.* at 442-45, 446 S.E.2d at 663-67 (internal quotations omitted).

Here, the issue of neutrality that was of concern in *Panepinto* is simply not implicated. Petitioner is not being denied medical services (quite the opposite), nor is he alleging disparate treatment. Moreover, and perhaps more compellingly, unlike in *Panepinto*, here, evaluating the safety of the medication to be administered is explicitly required under the *Sell* test. Under the fourth prong, a court is required to find that the medication is "medically appropriate, i.e., in the patient's best medical interest in light of [their] medical condition." *Sell*, 539 U.S. at 181. Additionally, *Sell* emphasized the need to evaluate the side effects and risks of the medication. *Id.* at 181, 185. Thus, to the extent that article III, section 1 of the West Virginia Constitution affords the right to "safety" as applied to this case, that right is safeguarded under the careful analysis required by *Sell*.

Petitioner also cites *Lawrence v. Barlow*, arguing it recognizes individuals' rights under the West Virginia Constitution to be "free in their own thoughts and operation of mind." Pet'r's Br. 8. Contrary to Petitioner's assertion, *Lawrence* makes no reference to the West Virginia

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[6] Abrogated by constitutional amendment W. Va. Const. art. VI, § 57 (amended 2018) declaring, "[n]othing in this constitution secures or protects a right to an abortion or requires the funding of abortion."

Constitution nor does the Court's analysis of the facts of that case draw any parallels to Petitioner's circumstances. *Lawrence*, 77 W. Va. 289, ___, 87 S.E. 380, 381 (1915). *Lawrence* involved an individual who was civilly committed to a mental health facility, yet despite having been restored to "sanity" was only released on bond from the hospital and remained subject to restrictions on his civil liberties, including lacking control over his property and freedom to contract without judicial approval. *Id.* at ___, 87 S.E. at 381. The Court found that the term "liberty" was not limited to physical restraint, and therefore, because petitioner had been restored to sanity, he was being unlawfully deprived of his liberties. *Id.* ___, 87 S.E. at 381-82. Simply put, neither the analysis nor the holding supports Petitioner's proposition.

Lastly, Petitioner implies that involuntary medical treatment has been restricted in West Virginia to only those situations involving emergencies or dangers to self or others. Pet'r's Br. 9. In support, he cites to *State ex rel. White v. Narick* where the state was permitted to force-feed a hunger striking inmate to prevent his death. 170 W. Va. 195, 198-99, 292 S.E.2d 54, 57-58 (1982). First, the court in *White* did not limit its holdings to only those situations where life was at stake, but merely recognized that preserving life is a strong governmental interest that under some circumstances may warrant infringing on an individual's right to privacy and freedom of expression. *Id.* Nothing in *White* precludes other important governmental interests, including restoration of competency, to be of sufficient importance to warrant infringement upon a constitutionally protected right. In fact, the Court recognized that other governmental interests, including "orderly prison administration" may be of sufficient importance to warrant compelled treatment. *Id.* at 198, 292 S.E.2d at 57.

Second, *White* did not involve an incompetent defendant, yet the court still found forced medical treatment was permissible. *Id.* The Court specifically observed that "[*c*]*ompetent, rational*

patients have been allowed to determine their fates by refusing medical treatment." *Id.* at 199, 292 S.E.2d at 58 (emphasis added). This important distinction highlights that even a mentally competent individual's right to refuse medical treatment is not absolute. Furthermore, *White* did not examine the right to refuse medical treatment in the context of the state constitution, choosing instead to analyze it under the federal constitution, again underscoring that West Virginia aligns closely with the federal constitution regarding the right to refuse treatment. *Id.* at 198-99, 292 S.E.2d at 57-56.

While "provisions of the Constitution of the State of West Virginia may, in certain circumstances, require higher standards of protection than afforded by the Federal Constitution," syl. pt. 1, *State v. Bonham*, 173 W. Va. 416, 173 S.E.2d 501 (1984), this Court frequently adopts without expansion the same rights afford to criminal defendants under the federal constitution. *See* syl. pt. 5, *State v. Miller*, 194 W. Va. 3, 459 S.E.2d 114 (1995) (adopting the *Strickland v. Washington*, 466 U.S. 668 (1984), test for claims of ineffective assistance of counsel); *State v. Choat*, 178 W. Va. 607, 612, 363 S.E.2d 493, 498 (1987) ("adher[ing] to the standard set forth by the court in *Terry* [*v. Ohio*, 392 U.S. 1 (1968),] and its federal progeny . . . ."); syl. pt. 8, *State v. Zaccagini*, 172 W. Va. 491, 308 S.E.2d 131 (1983) (adopting the test set forth in *Blockburger v. United States*, 287 U.S. 299 (1932), for double jeopardy analysis); and *State v. Adkins*, 176 W. Va. 613, 624, 346 S.E.2d 762, 773 (1986) (adopting the totality of the circumstances test to assess the validity of a warrant as put forth in *Illinois v. Gates*, 462 U.S. 213 (1983)). Ultimately, this practice reflects a consistent finding that the protections afforded by the state and federal constitution are closely aligned.

Furthermore, other states confronted with the situation of involuntarily medicating an incompetent defendant have adopted the *Sell* test. *Smith v. State*, 145 So. 3d 189, 192 (Fla. Dist.

Ct. App. 2014); *Cotner v. Liwski*, 403 P.3d 600, 608 (Ariz. Ct. App. 2017); *Warren v. State*, 778 S.E.2d 749, 752-53 (Ga. 2015); *Barrus v. Mont. First Jud. Dist. Ct.*, 456 P.3d 577, 583-86 (Mont. 2020); *State v. DeMarcia*, No. C-2301110, 2023 WL 8813174 (Ohio Ct. App. Dec. 20, 2023) (slip opinion); *People in Interest of Joergensen*, 524 P.3d 293, 295. (Colo. App. 2022). West Virginia should do the same.

The *Sell* test, which has been adopted by a multitude of states, and which requires an individualized and fact-based examination under a rigorous four-part test, amply protects the rights of criminal defendants under the West Virginia Constitution, and Petitioner has failed to argue—let alone establish—that *Sell* does not adequately protect his rights. Accordingly, this Court should refuse the writ.

C. The circuit court properly applied the *Sell* test to the facts of Petitioner's case, and thus, did not err in ordering Petitioner be involuntarily administered medication to restore his competency to stand trial.

Petitioner appears to concede that under the *Sell* test, the trial court's order was not clearly erroneous as a matter of law, as he makes no argument that the circuit court misapplied the *Sell* test to the facts of the case, nor does he argue that the circuit court erred in finding under *Sell* that Petitioner could be involuntarily medicated. *See* Pet'r's Br. *generally*. When examining each prong of the *Sell* test and the circuit court's application of such to the facts, it is clear that the circuit court did not err.

Under *Sell*, the state must prove that (1) there are "important governmental interests at stake"; (2) "involuntary medication will significantly further those concomitant state interests" in that "administration of the drugs is substantially likely to render the defendant competent to stand trial" and "substantially unlikely to have side effects that will interfere significantly with the defendant's ability to assist counsel in conducting a trial defense"; (3) "involuntary medication is

necessary to further those interests," i.e., "any alternative, less intrusive treatments are unlikely to achieve substantially the same results"; and (4) "administration of the drugs is medically appropriate, i.e., in the patient's best medical interest in light of [their] medical condition." 539 U.S. at 180. The State proved each of these through the testimony of Dr. Aynampudi, and, thus, the order in question does not exceed the circuit court's legitimate powers.

The court held a hearing on September 19, 2024, wherein Petitioner's treating psychiatrist testified as to the need and medical appropriateness of involuntarily medicating Petitioner to restore his competency to stand trial. Tr. 4-27. Petitioner also testified on his own behalf, asserting that he was misdiagnosed, did not suffer from delusions, and that medical personnel at Sharpe Hospital were alleging he was delusional to undermine his defense of selective prosecution. Tr. 29-33. He further testified to having taken one dose of medication while hospitalized but had refused further doses because it caused him to feel drowsy. Tr. 35.

The circuit court engaged in a thoughtful and careful analysis, applying the four prongs of *Sell* to the facts of Petitioner's case in reaching its conclusion. Under the first prong, the circuit court found that the state had an important interest in bringing Petitioner to trial given the serious nature of the charges, which include first degree robbery, use or presentment of a firearm during the commission of a felony, child neglect creating substantial risk of serious bodily injury or death, and fleeing with reckless indifference. Tr. 46.; App. 4. Furthermore, the circuit court noted that Petitioner has been hospitalized at Sharpe Hospital since March 2024, and remained incompetent to stand trial in the absence of medication. Tr. 46.; App. 24-26.

Under the second prong, the circuit court found based on the uncontroverted testimony of Petitioner's treating psychiatrist, Dr. Aynampudi, that Petitioner was unlikely to become competent to stand trial without medication, but the administration of the antipsychotic drug

paliperidone was substantially likely to render him competent to stand trial. Tr. 14, 22, 46; App. 24-26. Additionally, based on Dr. Aynampudi's testimony, the circuit court found that the side effects of paliperidone were substantially unlikely to interfere with Petitioner's ability to assist his counsel. Tr. 22, 46.[7]

Under the third prong, the circuit court found there were no less intrusive means to restore Petitioner's competency, as Petitioner had refused all less intrusive means. Tr. 22, 46; App. 24. Specifically, Dr. Aynampudi testified that Petitioner had refused medication after only taking a few doses and had ceased participating in all competency restoration services in May 2024. Tr. 11, 20. Dr. Aynampudi further testified that a long-acting injectable would be utilized and administered a total of three times in the following 50 days. Tr. 23-24. He testified that Petitioner would be offered the medication orally, but if he refused, the procedure would be to use the injectable form, as there were no means by which the oral medication could be given involuntarily as crushing the capsule impacts absorption. Tr. 26-27. Under the fourth prong, the circuit court found that the administration of paliperidone was medically appropriate, as Dr. Aynampudi testified it was appropriate for the treatment of delusional disorder and the side effects were relatively minor and usually abated within a few days. Tr. 20-22. Additionally, he testified that paliperidone was frequently used at Sharpe Hospital and he was unaware of any serious side effects. Tr. 21-22.

[7] Petitioner's desire to represent himself highlights an interest that is distinct from that of the state, yet he is currently unable to pursue due to his incompetent status. This situation is contemplated in *Sell*, which acknowledges the potential for "different purpose[s]," including the petitioner's own interests, to justify the involuntary administration of medication. *Sell*, 539 U.S.at 181-182. *See also*, *Commonwealth of Pa. v. Sam*, 952 A.2d 565, 578-579 (Pa. 2008) (holding that appellee had an interest in pursuing post-conviction relief, thereby satisfying the first prong of *Sell*.)

Because the circuit court properly applied the four-part *Sell* test to the facts of Petitioner's case, and the evidence, including the uncontroverted testimony of Petitioner's treating psychiatrist, established that all four prongs were met, the circuit court did not err as a matter of law, and this Court should deny the writ of prohibition.

CONCLUSION

For the foregoing reasons, this Court should refuse Petitioner's Petition for a Writ of Prohibition.

Respectfully submitted,

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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Appeal No. 24-547

STATE OF WEST VIRGINIA ex rel.
AARON JIMMIE URBAN,

Petitioner,

v.

HONORABLE DAVID HARDY,
Judge of the Circuit Court of Kanawha County

Respondent.

CERTIFICATE OF SERVICE

I, Sandra M. Walls, do hereby certify that the foregoing **Brief of Respondent** is being served on counsel of record via the West Virginia Supreme Court of Appeals E-filing System pursuant to Rule 38A of the West Virginia Rules of Appellate Procedure this 24th day of October 2024.

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