AMERICAN CONSTITUTIONALISM

VOLUME II: RIGHTS AND LIBERTIES

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Supplementary Material

Chapter 12: The Contemporary Era – Individual Rights/Personal Freedom and Public Morality

**In re Snyder, 308 Kan. 626 (KS 2018)**

*In 2012, Clay Snyder was charged with rape, aggravated criminal sodomy, and aggravated indecent liberties with a child. He made a motion that he was mentally incompetent to stand trial, and he was found not competent to stand trial with no substantial probability of attaining competence in the foreseeable future. He was involuntarily committed as dangerous to others and in need of treatment, though there was no expectation that he could be cured. A state trial court ordered his confinement for care and treatment. Snyder appealed to the state supreme court arguing that his civil commitment deprived him of liberty without due process since there was no expectation that his treatment would lead to cure and release. The state supreme court unanimously affirmed the civil commitment order, holding that his confinement as a danger to others did not violate his constitutional rights.*

Judge STEGALL.

. . . .

Civil commitment is a "significant deprivation of liberty that requires due process protection." *Addington v. Texas* (1979). As the Supreme Court has stated, "[T]he Due Process Clause requires the State in a civil-commitment proceeding to demonstrate by clear and convincing evidence that the individual is mentally ill and dangerous." *Kansas v. Hendricks* (1997). . . .

. . . . To involuntarily commit Snyder under the Care and Treatment Act as applied to Snyder . . . , the State was required to prove not only that he was charged with an off-grid crime but also that he was "likely to cause harm to self and others. . . .

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. . . . The gravamen of Snyder's due process complaint is that in his view, involuntary commitment of a person who qualifies as a mentally ill person under Kansas law only because of an incurable disability is unconstitutional. The claim is essentially that such involuntary commitment can only be lawfully justified by treatment that has the potential to cure or improve a person's mental condition.

Applying this novel rule, Snyder argues the State cannot confine him because his intellectual disability cannot be cured or improved (calling it "untreatable"). For purposes of our analysis, we will assume Snyder's disability will permanently impair him to some degree, regardless of treatment. Even so, the question remains-does the Due Process Clause forbid the State from civilly committing an individual like Snyder whose mental condition cannot be cured or improved through treatment? The answer is no.

Snyder cites *O’Connor v. Donaldson* (1975) and *Youngberg v. Romeo* (1982) for the proposition that the State must provide treatment that can cure or improve his disability. However, Snyder misapprehends the import of these decisions. In *O'Connor*, the Supreme Court expressly declined to address the issue, stating, "[T]here is no reason now to decide whether mentally ill persons dangerous to themselves or to others have a right to treatment upon compulsory confinement by the State." In *Youngberg*, the Court held that a severely mentally disabled person subject to civil commitment had the right to "minimally adequate or reasonable training to ensure safety and freedom from undue restraint.” But, the *Youngberg* Court similarly declined to consider whether "a mentally retarded person, involuntarily committed to a state institution, has some general constitutional right to training per se, even when no type or amount of training would lead to freedom."

Instead, the Supreme Court has strongly indicated that a state may civilly commit an individual whose mental condition cannot be successfully treated. In *Hendricks*, the Court held the civil commitment of a sexually violent predator under the SVPA was nonpunitive even though his "mental abnormality" was untreatable. The Court emphasized that it had "never held that the Constitution prevents a State from civilly detaining those for whom no treatment is available, but who nevertheless pose a danger to others." As the Court explained,

"A State could hardly be seen as furthering a 'punitive' purpose by involuntarily confining persons afflicted with an untreatable, highly contagious disease. Accord, *Compagnie Francaise de Navigation a Vapeur v. Louisiana Bd. of Health* (1902) (permitting involuntary quarantine of persons suffering from communicable diseases). Similarly, it would be of little value to require treatment as a precondition for civil confinement of the dangerously insane when no acceptable treatment existed. To conclude otherwise would obligate a State to release certain confined individuals who were both mentally ill and dangerous simply because they could not be successfully treated for their afflictions. Cf. *Greenwood v. United States* (1956) ('The fact that at present there may be little likelihood of recovery does not defeat federal power to make this initial commitment of the petitioner'); *O'Connor v. Donaldson* (1975) ('[I]t remains a stubborn fact that there are many forms of mental illness which are not understood, some which are untreatable in the sense that no effective therapy has yet been discovered for them, and that rates of ‘cure’ are generally low')."

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Applying *Hendricks*, we hold the Due Process Clause does not obligate the State to release individuals from civil commitment who have been properly found to be mentally ill and dangerous "simply because they [can]not be successfully treated for their afflictions." Accordingly, the fact that Snyder's intellectual disability cannot be cured or improved through treatment does not prevent the State from civilly committing him in accordance with other statutory and constitutional safeguards.

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*Affirmed*.