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Constitutional Law--Conformity in the Commitment and Release Procedures of the Insane

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CONSTITUTIONAL LAW—CONFORMITY IN THE COMMITMENT AND RELEASE PROCEDURES OF THE INSANE. *State v. Clemons*, 515 P.2d 324 (Ariz. 1973).

The Arizona Supreme Court stated in a recent decision that the commitment and release procedures for criminally insane persons must conform with those used for the civilly insane. The matter was raised by an inmate of the Arizona State Hospital. He alleged that admission and release provisions established by Arizona statute differed for the criminally and civilly insane and discriminated against persons committed after acquittal on criminal charges by reason of insanity.

The person civilly committed to a mental institution is granted a full hearing, at which he may introduce and examine witnesses who testify as to his sanity. The criminally charged mental patient has no separate hearing.[1] The Arizona release procedure differs as well. The civilly committed patient may be released upon a conclusion of sanity reached by the superintendent of the hospital or as a result of the patient's filing a petition for declaration of his soundness of mind. In contrast, the criminal patient is left with the burden of proving his sanity to a jury.[2]

The Arizona court concluded that the procedures clearly differed, and that the safeguards afforded civil patients must be extended to those who plead not guilty by reason of insanity to criminal charges. Where these safeguarding procedural similarities do not exist, there is a constitutional violation of the equal protection clause. In citing precedents, the Arizona court examined the decision of *Baxstrom v. Herold*,[3] wherein the United States Supreme Court stated:

> [E]qual protection does not require that all persons be dealt with identically, but it does require that a distinction made have some relevance to the purpose for which the classification is made. . . . Classification of mentally ill persons as either insane or dangerously insane of course may be a reasonable distinction for purposes of determining the type of custodial or medical care to be given, but it has no relevance whatever in the context of the opportunity to show whether a person is mentally ill at all.[4]

1. ARIZ. REV. STAT. § 36-514 (1958).
2. *Id.*
3. Baxstrom v. Herold, 383 U.S. 107 (1966).
4. *Id.* at 111.

Arizona believes the Supreme Court of the United States has indicated that where substantial differences in commitment or release procedures for criminal and civil patients exist, the equal protection clause applies. It has, therefore determined its procedural statute to be unconstitutional.[5]

Where does Oklahoma stand in an analysis of procedural equality for criminally and civilly mentally ill patients? Do Oklahoma statutes institutionalize and release all patients on equal terms, or do they, like Arizona statutes, grant the state a lessened burden of proof at criminal commitments and force a greater burden of proof on the criminal patient at the time of release?

A comparison of the procedures involved shows a clear dichotomy between civil and criminal release. The civil release may be acquired by petition from the patient, a relative, or the hospital superintendent. Two qualified examiners must testify as to the competency of the patient before the judge can declare the person legally sane.[6] For a criminal patient, however, the release procedure is vague in that he is to be "kept as a patient until legally discharged"[7] but the statute does not delineate the procedure for such discharge. When committed by a jury which finds the accused too incompetent to stand trial, he will be confined to a state mental hospital until he is discharged and released as presently sane by the superintendent of the hospital.[8] Neither the patient nor his family may petition for examination.[9] Thus three avenues of release are open to the civilly committed mental patient while the criminal patient is afforded but one, one which is tenuous at best.

The commitment procedure offers similar substantive difference. In civil commitments court certification is required and provides for a hearing to make an examination of the alleged mentally ill person.[10] The examination is conducted by a sanity commission composed of two doctors and one licensed attorney. Following this examination, a hear-

5. ARIZ. REV. STAT. ANN. § 13-1621.01 (1956). Most relevant aspect of statute: If the defendant is found guilty at the first trial, there shall be a second trial following promptly after the first trial. At the second trial, the jury shall consider the defense of insanity and, if appropriate, the defendant's present mental condition with regard to commitment to a mental institution. The court may convene a separate hearing for the purpose of receiving evidence relevant to the issue of punishment, and at such hearing the punishment in capital cases shall be fixed.

6. OKLA. STAT. tit. 43a, § 75 (1971).

7. OKLA. STAT. tit. 22, § 1161 (1921).

8. OKLA. STAT. tit. 22, § 1167 (1963).

9. OKLA. STAT. tit. 43a, § 54 (1971).

10. OKLA. STAT. tit. 43a, § 54 (1971).

ing is held at which a report of the sanity commission is presented. Only then can the patient's *current* sanity be evaluated.[11] This statutory procedure applies to all involuntary civil commitments but does not apply and is not utilized in criminal proceedings where a defendant alleges insanity.

An Oklahoma jury, upon finding an individual not guilty by reason of insanity, can peremptorily have him detained as a mental patient until legally discharged.[12] In permitting such an action, Oklahoma is allowing the jury to state that the defendant is of sound enough mind to stand trial, but must still be committed to a mental hospital. The formal sanity hearing, so fundamental in civil procedure, is markedly absent.

Oklahoma has avoided solving the problem of substantive procedural variance. In 1945 the Criminal Court of Appeals, in *Rice v. State*, called for the legislature to enact laws which would assure the mentally ill criminal defendant a sanity hearing,[13] and yet nothing has been done.

Equal protection is guaranteed to every American through the 14th amendment. If the civil patient has three avenues of release available to him, the criminal defendant must also be afforded the same rights. If the civil admittee is guaranteed a sanity hearing at the time of the commitment, such must also be available to the criminal. As long as all persons are not given equal procedural safeguards in the commitment and release procedures from mental institutions, the equal protection clause of the constitution is being violated.

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11. Williams, *Is a Defendant Entitled to a Civil Sanity Hearing Prior to Commitment . . .*, 43 OKLA. B. ASS'N J. 292 (1971).
12. Rice v. State, 80 Okla. Crim. 277, 158 P.2d 912 (1945).