

The Supreme Court of the State of Louisiana

STATE OF LOUISIANA

No. 2022-KK-00983

VS.

JAMAAL EDWARDS

IN RE: State of Louisiana - Applicant Plaintiff; Applying For Writ Of Certiorari, Parish of Jefferson, 24th Judicial District Court Number(s) 13-4134, Court of Appeal, Fifth Circuit, Number(s) 22-K-41;

November 01, 2022

Writ application denied. See per curiam.

SJC
JLW
JTG
WJC
JBM
PDG

Hughes, J., would grant.

Supreme Court of Louisiana
November 01, 2022

Katio Marjanovic
Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

No. 2022-KK-00983

STATE OF LOUISIANA

VS.

JAMAAL EDWARDS

On Writ of Certiorari to the Court of Appeal, Fifth Circuit, Parish of Jefferson

PER CURIAM

Writ denied. Respondent, Jamaal Edwards, shot and killed his fiancée, Tracy Nguyen, on August 10, 2013. He was incoherent when arrested and did not appear to understand his actions. Police hypothesized that respondent was under the influence of some synthetic drug, but the substance was never identified by chemical testing. It is believed that respondent used a substance or substances that induced his temporary psychotic state.¹ After a bench trial, respondent was found not guilty by reason of insanity on July 20, 2016. The trial court committed respondent to inpatient treatment at the Forensic Division of the Eastern Louisiana Mental Health System (ELMHS).

Psychiatric notes during this inpatient hospitalization document multiple violent attacks by respondent on other patients and hospital staff as well as sexually aggressive behavior toward female staff.² In addition, the notes reflect numerous instances in which he destroyed property, openly masturbated in front of others, threatened staff and their families, was caught with contraband substances (the

¹ About three months earlier, respondent voluntarily sought treatment for psychotic symptoms. It was also hypothesized at that time that the psychotic symptoms were induced chemically but this was never confirmed.

² During his prior hospitalization, respondent also engaged in unprovoked attacks on other patients. While jailed and awaiting trial, respondent similarly got into fights with other prisoners and refused to follow rules.

smuggling and distribution of which he appeared to have orchestrated), was disruptive, and refused to comply with treatment or rules. He is described in the notes as arrogant, manipulative, and, with the possible exception of the murder of his fiancée, free from any remorse for his actions.

During his hospitalization, respondent was diagnosed with antisocial personality disorder, multiple substance use disorder in forced remission in a controlled environment (i.e. involuntary inpatient hospitalization), and a prior episode of substance induced psychotic disorder now resolved (i.e. the psychotic episode during which he shot and killed his fiancée).

Respondent's potential for future violence is clear and apparent. His antisocial personality disorder in conjunction with his persistent substance abuse is a recipe for almost certain disaster. However, his diagnosis, according to expert testimony presented here, does not constitute a treatable mental illness that would justify his continued involuntary inpatient hospitalization under existing law. That law was enacted to implement the directives of the United States Supreme Court in *Foucha v. Louisiana*, 504 U.S. 71, 112 S.Ct. 1780, 118 L.Ed.2d 437 (1992).

In *Foucha v. Louisiana*, the United States Supreme Court held that Louisiana could not continue to confine insanity acquittee, Terry Foucha, in a mental hospital, since he could no longer be considered mentally ill. Like in the present case, an expert testified that "Foucha probably suffered from a drug induced psychosis but that he had recovered from that temporary condition; that he evidenced no signs of psychosis or neurosis and was in 'good shape' mentally; that he had, however, an antisocial personality, a condition that is not a mental disease and that is untreatable." *Foucha*, 504 U.S. at 75, 112 S.Ct. at 1782. Therefore, Foucha could no longer be considered legally insane or mentally ill. As such, the Supreme Court found that any further confinement of him would be subjected to the constitutional procedures for involuntary civil commitment proceedings set forth in *Addington v. Texas*, 441 U.S.

418, 99 S.Ct. 1804, 60 L.Ed.2d 323 (1979). The Supreme Court in *Addington* had held “that to commit an individual to a mental institution in a civil proceeding, the State is required by the Due Process Clause to prove by clear and convincing evidence the two statutory preconditions to commitment: that the person sought to be committed is mentally ill and that he requires hospitalization for his own welfare and protection of others.” *Foucha*, 504 U.S. at 75, 112 S.Ct. at 1783.

On May 31, 2022, respondent was ordered released from involuntary inpatient hospital care into the community pursuant to the recommendation of a psychiatric expert, who testified, in essence, that there is nothing else that can be done. The *Foucha* decision, as implemented statutorily, requires respondent to be released. However, his release clearly presents a risk to public safety, which the trial court, pursuant to the directives of the court of appeal, *State v. Edwards*, 22-41 (La. App. 5 Cir. 5/25/22) (unpub’d), available at 2022 WL 1657305, has tried to mitigate by imposing several strictures on respondent, including house arrest, electronic monitoring, and weekly drug screening.³ The State all but concedes that this is all that can be done to protect the public at present under existing law and *Foucha*,⁴ which decision the State acknowledges this court lacks the authority to overrule.

³ Shortly after his release, respondent had already violated those strictures by sending an electronic message to a female staff member at ELMHS. While the contents of the message viewed alone might appear nonthreatening, when viewed in the context of respondent’s history of violence and sexually assaultive behavior toward female staff it certainly would have caused alarm in the recipient. In response, the trial court increased the intensity of respondent’s home incarceration and ordered him to spend 15 days in parish jail.

⁴ The public might also be better protected if respondent faced criminal consequences for the violent acts he committed while in the hospital, one of which resulted in a broken jaw and permanent hearing loss for the victim. In *Foucha*, the United States Supreme Court envisioned such a possibility:

Furthermore, if *Foucha* committed criminal acts while at Feliciana, such as assault, the State does not explain why its interest would not be vindicated by the ordinary criminal processes involving charge and conviction, the use of enhanced sentences for recidivists, and other permissible ways of dealing with patterns of criminal conduct. These are the normal means of dealing with persistent criminal conduct. Had they been employed against *Foucha* when he assaulted other inmates, there is little doubt that if then sane he could have been convicted and incarcerated in the usual way.

The Legislature amended La.C.Cr.P. art. 657 to comply with the United States Supreme Court’s directives in *Foucha*. Previously, that provision required a contradictory hearing to determine “whether the committed person can be discharged, or can be released on probation, without danger to others or to himself.” 1992 La. Acts, No. 398. To comply with the *Foucha* decision, the article was amended to require a contradictory hearing “to determine whether the committed person is no longer mentally ill as defined by R.S. 28:2(14) and can be discharged, or can be released on probation, without danger to others or to himself as defined by R.S. 28:2(3) and (4).” 1993 La. Acts, No. 700.⁵ Thus, as amended and at present, the State is required to prove by clear and convincing evidence “that the committed person is currently both mentally ill and dangerous.” The State concedes that it cannot make that showing here because antisocial personality disorder is not deemed a mental illness as defined by La.R.S. 28:2 and current diagnostic standards.⁶ Thus,

Foucha, 504 U.S. at 82, 112 S.Ct. at 1786–87.

⁵ At present, La.C.Cr.P. art. 657 provides:

After considering the report or reports filed pursuant to Articles 655 and 656, the court may either continue the commitment or hold a contradictory hearing to determine whether the committed person no longer has a mental illness as defined by R.S. 28:2 and can be discharged, or can be released on probation, without danger to others or to himself as defined by R.S. 28:2. At the hearing the burden shall be upon the state to seek continuance of the confinement by proving by clear and convincing evidence that the committed person currently has a mental illness and is dangerous. After the hearing, and upon filing written findings of fact and conclusions of law, the court may order the committed person discharged, released on probation subject to specified conditions for a fixed or an indeterminate period, or recommitted to the state mental institution. A copy of the judgment and order containing the written findings of fact and conclusions of law shall be forwarded to the administrator of the forensic facility. Notice to the counsel for the committed person and the district attorney of the contradictory hearing shall be given at least thirty days prior to the hearing.

⁶ La. R.S. 28:2(24) defines a “person who has mental illness” as:

any person with a psychiatric disorder which has substantial adverse effects on his ability to function and who requires care and treatment. It does not refer to a person with, solely, an intellectual disability; or who suffers solely from epilepsy or a substance-related or addictive disorder.

The psychiatric expert here testified that respondent does not have a psychiatric disorder that can be treated:

respondent must be conditionally discharged despite the State’s clear and convincing evidence of his dangerousness because, under the law as amended to comply with *Foucha*, respondent must be *both* dangerous *and* mentally ill. *See State v. Roberts*, 620 So.2d 824 (La. 1993) (per curiam) (“An insanity acquittee confined by the state is entitled to release when he has recovered his sanity or is no longer dangerous, i.e., he may be held as long as he is both mentally ill and dangerous, but no longer.”).

Judge Molaison, concurring in the court of appeal, is critical of the *Foucha* decision, and proposes that a legislative solution is needed to address the troubling situation presented here. Judge Wicker, also concurring in the court of appeal, offers a potential legislative roadmap. Judge Wicker reviewed legislation from several jurisdictions that had narrowly tailored enactments, within the parameters set by the United States Supreme Court in *Foucha*, designed to allow a limited form of continued confinement under certain circumstances when there is a substantial likelihood a person, if released, will commit criminal acts jeopardizing public safety, or will present a reasonably foreseeable danger to self or the community. We join Judges Wicker and Molaison in urging the Legislature to examine the concerning situation presented here and carefully craft a legislative solution to better protect the public.

Respondent was found not guilty by reason of insanity of murder. A finding of not guilty by reason of insanity is a determination that he undoubtedly committed the charged criminal act but he cannot be punished for it because he was legally insane at the time of his actions. *See State v. Branch*, 99-1484, p. 1 (La. 3/17/00),

. . . He does not meet criteria as set forth by the DSM for a psychiatric illness. He has linear thought process. He does not suffer from delusional beliefs, and therefore, he doesn’t meet criteria for a psychiatric illness at this time.

I have diagnosed him with antisocial personality disorder, but there is no treatment for that. It is simply a way of describing the way [respondent] interacts with the world around him, and basically, the way that he reacts to situations or how he obtains his goals; and therefore, it is not a treatable mental illness.

759 So.2d 31, 32 (per curiam) (“A Louisiana jury considering an accused’s dual plea of not guilty and not guilty by reason of insanity must nevertheless first determine whether the state has proved the essential elements of the charged offense beyond a reasonable doubt before it may proceed to a determination of whether he was incapable of distinguishing between right and wrong at the time of the offense and therefore exempt from criminal responsibility for his acts.”); *see also Jones v. United States*, 463 U.S. 354, 363, 103 S.Ct. 3043, 3049, 77 L.Ed.2d 694 (1983) (“A verdict of not guilty by reason of insanity establishes two facts: (i) the defendant committed an act that constitutes a criminal offense, and (ii) he committed the act because of mental illness.”). Respondent has a well-documented history of violence while involuntarily confined. A psychiatric expert opined that he presents a risk for future violence. The State has shown by clear and convincing evidence that he is dangerous. Releasing him into the community under these circumstances endangers public safety. Despite all of this, we are constrained under United States Supreme Court precedent and existing statutory enactments in response thereto to deny the State’s writ application, which we reluctantly do with trepidation. We issue reasons in conjunction with this writ denial to urge the United States Supreme Court to reexamine this area of law and the Louisiana Legislature to act.