



## Oregon judges can force mentally incompetent defendants to take antipsychotic meds, Oregon Supreme Court says

injection-syringe-medicine.jpg

One defense attorney said defendants who refuse medications will have to be strapped to a backboard and injected. (*stock.xchng*)

**Aimee Green, The Oregonian** By **Aimee Green, The Oregonian**

**Email the author | Follow on Twitter**

on March 20, 2014 at 6:23 PM, updated March 20, 2014 at 8:01 PM

The Oregon Supreme Court said in a **landmark ruling Thursday** that Oregon judges in some cases can force mentally ill criminal defendants to take antipsychotic medications in an effort to make them competent for trial.

Although defense attorneys have vigorously argued against such force, the state's high court agreed with the prosecution, saying the authority is already written into Oregon law.

Laura Graser, a Portland attorney who argued to the high court against the practice, said defendants, even if ordered, are unlikely to take medications willingly. That means they would need to be held down and strapped to a backboard -- what Graser equated to "mental rape."

"They will pull down their pants and stick a needle in their buttocks," Graser said. "I think the terror of having that procedure would be the same for you or me as it would be for an ill person. Really terrifying. The word 'rape' doesn't seem too strong."

In 2003, the U.S. Supreme Court heard the case of Charles Thomas Sell, a St. Louis dentist who had been accused of trying to kill an FBI agent. The court ruled that forcing antipsychotic medications on defendants charged with serious crimes was acceptable under certain conditions.

Those conditions include that "important state interests are at stake" in prosecuting the defendant, that the medication is likely to restore a defendant to competency and that the medication is unlikely to have bad side effects.

Despite the U.S. Supreme Court's decision 11 years ago, Oregon, unlike some other states, has not written such judicial power into state law by specifically mentioning Sell's case by name. Defense attorneys argue that the Sell case should be specifically mentioned in Oregon law if judges are going to be given such power.

The question came before the Oregon Supreme Court in the case of James Michael Frances Lopes, 38, who has delusional disorder. In August 2012, Lopes was charged with attempted first-degree sex abuse after authorities say he walked up to an 8-year-old girl in Portland's Park Blocks and put his hand on her waist.

They say he suggested the girl remove her shorts. The girl ran and reported the incident to teachers or counselors, who were nearby.

Mental-health specialists at the Oregon State Hospital determined that Lopes was mentally unfit to participate in his defense but that he might be made fit through the use of antipsychotic medications.

Multnomah County Circuit Judge Eric Bloch ordered in June 2013 that Lopes be medicated in an effort to make him competent for trial. The judge found the list of conditions established by the U.S. Supreme Court to be true, including that an "important state interest" was "at stake" in prosecuting Lopes.

It apparently was the first time an Oregon judge made such a decision and put it on hold so the Oregon Supreme Court could consider it. Since then, the state Supreme Court also has been asked to rule on the case of a Dalles man, **Cesar Valencia**, who was ordered by Wasco County Circuit Judge Janet Stauffer to receive antipsychotic drugs to try to make him fit for trial.

Valencia, who has schizophrenia, is accused of using a gun to rob an employee at a Dalles dental office. Police found him by following his footprints through the snow from the dental office to his home.

Valencia's defense has argued, in part, that Valencia shouldn't be forced to take the medications because they have serious side effects, including morbid obesity and diabetes.

In Lopes' case, the Oregon Supreme Court ruled that although judges have the authority to force medication on some mentally incompetent defendants, Lopes was not one of them. The reason is because medicating him wouldn't fulfill an important state interest, because the length of time he's been incarcerated since his arrest far exceeds any jail or prison sentence he would receive if convicted.

Lopes has been in the Multnomah County jail or state mental hospital for more than 1½ years. If convicted, he likely would be sentenced to probation.

Graser, the attorney representing Lopes in his appeal, believes the case against him will be dismissed because of Thursday's opinion. The opinion was written by Justice Martha Lee Walters.

Of note, before Thursday's ruling, Oregon health providers have had the power to administer medications to patients against their wishes -- and without seeking a judge's permission -- if patients are deemed a danger to themselves or if they have a "grave disability."

-- Aimee Green

© 2014 OregonLive.com. All rights reserved.