The Eldred Case: A Troubled Encounter of Law and Science

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In July 2018, the Massachusetts Supreme Judicial Court ruled that a judge exercised appropriate discretion in ordering a woman, who was on probation for stealing jewelry to support her heroin habit, to jail as a result of her violation of the "drug-free" condition of her probation. Since the ruling was issued, it has been mischaracterized in a variety of ways. Some commentators have argued the decision stands for the proposition that substance use disorder does not eliminate an addict's "free will." Others have claimed the decision criminalizes drug addicts' relapses. A close reading of the decision shows a court struggling with conflicting public policies, the need to enforce a probation violation in the course of a disease process and a developing understanding of SUD patients' needs and capabilities.

On Aug. 22, 2016, a District Court judge imposed on the defendant a one-year term of probation, which required her to remain drug-free, submit to random drug screens and attend outpatient substance abuse treatment three times a week. That outpatient treatment began Aug. 29. On Sept. 2, the defendant failed a random drug test administered by her probation officer. The probation officer encouraged the defendant to enter inpatient treatment, but the defendant allegedly refused. A probation detention hearing was then held that same day because the probation officer noted that it was the Friday before Labor Day, the defendant's parents were out of town, and the probation officer did not want the defendant to leave his office testing positive for fentanyl. Defense counsel was unable to secure an inpatient placement for the defendant, so the judge ordered the defendant to be held in custody until such a placement became available. The defendant was released to an inpatient treatment facility after 10 days in custody.

On Nov. 22, a hearing was held on the defendant's probation violation. At that hearing, the defendant argued that her SUD rendered her incapable of remaining drug-free and asked that the "drug-free" probation condition be removed. The judge declined to remove that condition but added the condition that the defendant continue inpatient treatment. The question of the "drug-free" condition was appealed, and the SJC took up the matter because "this question presents issues of significant magnitude that require resolution." Importantly, the court stated that "the defendant's claim of SUD rests on science that was not tested below" in the trial court.

The defendant had claimed that a SUD patient cannot comply with a "drug-free" probation condition because she is unable to refrain from drug use. This, the defendant argued, made the SUD defendant analogous to the probationer defendant in another case who was homeless and was required to wear a GPS monitoring device. However, because the homeless shelter where the defendant lived could not accommodate such devices, the defendant's violation was ruled not to be a willful non-compliance with that probation condition. In this case, the court noted that "the appellate record before this court is inadequate to determine whether SUD affects the brain in such a way that certain individuals cannot control their drug use." Thus, the SJC left the door open for another case to raise the claim, based on a judicially recognized theory of addiction, that a SUD probationer cannot be expected to be able to comply with a "drug-free" condition of probation.

The court began its analysis by looking at the public policy goals of probation: rehabilitation of the defendant and protection of the public. With specific reference to drug cases, the court referred to its 1998 "Standards of Substance Abuse," which created a framework that would "promote public safety, provide access to treatment, protect due process, reduce recidivism and ensure offender accountability." Given these disparate goals, the court noted that judges can set any probation condition that is "reasonably related" to the goals of sentencing and probation. The court also stated that prior to agreeing to the probation conditions, the defendant did not claim that her SUD made her unable to abide by the "drug-free" condition. Consequently, the court concluded that the judge did not abuse her discretion by initially imposing that probation condition.

It is possible that, should another case be brought to the SJC in which a claim is properly made that SUD makes a "drug-free" probation condition unfair because it's practically impossible to comply with, the court might revisit the 1998 Standards to try to strike a different balance among the stated goals. The role of the threat of legal consequences for drug use for those with SUD is controversial and directly concerns the goals of providing access to treatment and ensuring offender accountability, which may be difficult to reconcile. Also, the significance of multiple relapses in the recovery process might be better accommodated in individual probation enforcement decisions, in light of new models of addiction that have been evaluated in court. (The court noted in particular that on appeal, the defendant advanced the "brain disease" theory that addiction makes it impossible for a patient to abstain from using drugs, contrasted with the Commonwealth's "behavioral model" holding that SUD only affects, but does not eliminate, the patient's "free will.") This would not be the first nor the last time courts adjust legal doctrine in light of advances in scientific knowledge.

At the probation violation proceedings after the failed drug test, the court expressed sympathy for trial court judges, "particularly judges in the drug courts, [who] stand on the front lines of the opioid epidemic." Where a probationer's probation violation arises out of the defendant's relapse, the confrontation between judicial and disease processes is stark: "The core of this dilemma is that although probation violations often arise out of a defendant's relapse, we recognize that relapse is part of recovery." What is a judge supposed to do, when he or she is confronted with a single incident of relapse that is undoubtedly a probation violation, in the context of the knowledge that those with SUD often relapse multiple times as part of their recovery? In the particular circumstances of the Eldred case, the judge felt the defendant, and the public, would be best protected by detaining her until an inpatient treatment placement could be found. (It should be noted that the defendant's counsel argued in her brief that the judge could have chosen to seek the defendant's civil commitment.)

In particular, the court denied that placing the defendant into custody under these circumstances constituted punishment for her relapse and positive drug test. Instead, "the judge was faced with either releasing the defendant and risking that she would suffer an overdose and die, or holding her in custody until a placement at an inpatient treatment facility became available," as one did after 10 days. The court also noted the lack of a suitable inpatient placement at the time the decision had to be made by the judge: "Although we recognize that the number of inpatient treatment placements is limited, the resolution of that problem concerns public policy and cannot be addressed by a judge." Had better alternatives been available to the judge at the time the decision had to be made, perhaps the question of "incarceration" might not have arisen at all.

This case highlights the tensions that arise when courts are faced with legal processes that may not adequately accommodate current theories of disease and human behavior, with pressing decisions in the context of long-term medical conditions and with reconciling such disparate public policy goals. What seems clear is that these issues will be revisited in future cases.

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