

WASHINGTON v. WALTER HARPER (1990)

IS THERE A RIGHT NOT TO TAKE DRUGS?

SUMMARY

By a vote of 6 to 3, the Supreme Court ruled that it is not necessary for a judge to find that an inmate is mentally ill before the prisoner can be administered antipsychotic drugs against his will. The decision was handed down February 27, 1990 in the case of *Washington v. Walter Harper*.

BACKGROUND

Walter Harper was sentenced to prison in 1976 for robbery. He served most of his four year term in the mental health unit at the Washington State Penitentiary. During his stay, he consented to the administration of antipsychotic drugs commonly used to treat persons with schizophrenia. Such drugs operate by altering the chemical balance in the brain and assist the patient in organizing his thoughts. A possible side effect of the medicine is severe spasms of the upper body tongue, throat or eyes.

When Harper was paroled in 1980, it was required that he continue to receive psychiatric treatment. In 1981, his parole was revoked after he assaulted two nurses. He was housed in a special unit at the prison for felons with mental disorders. Harper objected to receiving further medication, but the prison gave him the drugs anyway.

Prison policy dictated that such steps can be taken when a psychiatrist determines that an inmate suffers from a mental disorder and is gravely disabled or likely to harm himself or others. After a hearing in the prison, it was determined that Harper was a danger to others, and the medication was necessary to control him.

In February, 1985, Harper filed a complaint in state court claiming that administering of medicine without a judicial hearing violated his rights. The court said that the prison hearing was sufficient to allow Harper "due process" under the law. The Washington Supreme Court disagreed and reversed the ruling finding that the "highly intrusive nature" of the treatment required that further steps be taken to preserve Harper's rights. The state appealed to the Supreme Court.

ANALYSIS

Few would challenge the prospect that a doctor cannot give a person medication they do not want. Can a prison inmate make the same claim? Generally, courts have held that states can in fact infringe on an inmate's constitutional rights if it can be proved that such action is "reasonably related to legitimate penological interests." Nevertheless, the courts have said that prisoners do maintain some constitutional rights despite their incarceration.

In 1987, the justices gave further guidance in the area in a case involving a prison that had strict limitations on an inmate's right to marry. Once again, few would question the principle that states cannot restrict a citizen's right to marry. But the situation is different with inmates.

In the 1987 case, the Court said that there must be a valid relationship between a prison regulation and the government's justification for the regulation. Secondly, the justices said it must be determined what impact absence of the regulation will have on other inmates and prison resources. Thirdly, it must be found that there are not available alternatives to the regulation.

In their consideration of the Harper case, a majority of the justices said that there is little question that all three criteria are met. First, the state cannot only justify the regulation, it in fact has an obligation to keep inmates from hurting themselves or others. This establishes both the state's justification in the regulation, and the impact its absence could have on other inmates. The only alternative Harper offers is for him not to take the drugs. This, however, is not a suitable alternative because it fails to accomplish the same goal.

The crux of the case then rests on precisely what procedural safeguards must a prisoner be afforded before such an intrusive regulation is implemented. In short, is a prison hearing sufficient, or must there be a ruling by a judge?

The justices said that the prison psychiatrist and psychologist are in a better position to make an informed decision about whether an inmate needs medication than would a judge. The Constitution does not say that it is a judge who must protect an individual's due process rights.

The three dissenters in the case accused the majority of putting the administrative interests of the prison over Harper's medical needs. The justices maintained that prisons can justify nearly any regulation by saying that it is needed for security reasons, given the make-up of the prison population and the reason they are there.

Further, they maintain that while a decision to forcibly administer medication may be made by a medical professional, it should not be made by one who works in the prison. It should be made by someone who has only the patient's best interest in mind.

EXCERPTS FROM THE MAJORITY OPINION (Written by Justice Kennedy.)

The fact that the medication must first be prescribed by a psychiatrist, and then approved by a reviewing psychiatrist, ensures that the treatment in question will be ordered only if it is in the prisoner's medical interests, given the legitimate needs of his institutional confinement. These standards, which recognize both the prisoner's medical interests and the state's interests, meet the demand of the Due Process Clause . . .

“The risks associated with antipsychotic drugs are for the most part medical ones, best assessed by medical professionals. A state may conclude with good reason that a judicial hearing will not be as effective as continuous or as probing as administrative review using medical decision makers. We hold that due process requires no more.”

EXCERPTS FROM THE DISSENT (Written by Justice Stevens.)

“A rule that allows prison administrators to address potential security risks by forcing psychotropic drugs on mentally ill inmates for prolonged periods is unquestionably an exaggerated response to that concern.”