



Special Article

Restoration Delayed: Dismissal of Serious Felony an Extreme Remedy, But Fining the State Appropriate

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In *Nevada vs. Gonzalez* (1), the Nevada Supreme Court concluded that the Washoe County District Court abused its discretion when it dismissed a charge of sexual assault. Mr. Gonzalez had moved to dismiss due to a delay in competency restoration treatment, during which he remained in jail for 160 days prior to being transferred to a forensic hospital.

Gonzalez was charged with sexual assault, a category A felony. Two competency evaluations found him incompetent to stand trial. He was ordered by the court to obtain restoration treatment at Lake's Crossing Center, a forensic hospital in Washoe County, Nevada. Gonzalez waited in the Washoe County jail for 160 days before being transferred to Lake's Crossing Center. The hospital cited staffing shortages, a lack of inpatient beds, and COVID-19 protocols as reasons for the delay. Gonzalez moved to dismiss the case, arguing that his continued detention in jail violated his due process rights. The district court granted his motion to dismiss, citing *Jackson vs. Indiana* (2), and ruling that his detention in jail prior to transfer to the hospital was not reasonably related to competency restoration.

The state, on appeal, agreed that a due process violation had occurred secondary to the delay in restoration treatment. However, the state also claimed that dismissal of the charge was an extreme remedy in response to this violation. They argued that the court abused its discretion, given that the motion to dismiss was based on factors outside of the

prosecutor's control. They further claimed that the district court failed to properly balance the due process violation against society's interest in prosecuting crimes.

In its opinion, the Nevada Supreme Court held that the district court did abuse its discretion by dismissing the charge with prejudice. The court found that aggravated circumstances were not present, and the district court had failed to balance the deterrent objectives of dismissal and society's interest in prosecuting crimes, both of which are required to dismiss charges with prejudice. The case was reversed and remanded for further proceedings.

Nationally, delayed transfers from jails to forensic hospitals have repeatedly been found to be a serious due process violation, interfering with a defendant's Sixth Amendment right to a speedy trial. Observers have referred to a "competency crisis," with orders for restoration treatment increasing in many jurisdictions but a finite number of available forensic hospital beds. Nonetheless, this case makes it clear that the Nevada Supreme Court does not find dismissal of a serious felony charge to be a reasonable remedy for the undisputed due process violation associated with delayed admission, especially when the prosecution had no hand in causing the delay.

The Nevada Supreme Court went on to explain that other remedies are available, appearing to reference its earlier holding in *DPBH v. Eighth District Court et al.* (3) In this 2023 decision, the state Supreme Court held that a lower court did not abuse its discretion in holding the Nevada Division of Public and Behavioral Health (DPBH) in contempt and levying fines for failing to admit incompetent defendants on a timely basis. DPBH had argued that fines were counterproductive and based on an arbitrary seven-day timeline for compliance. DPBH further argued that compliance was impossible because of bed and staffing shortages. The court responded by pointing out that the DPBH did manage to comply in the past when facing a court order or settlement agreement, sometimes admitting defendants within days of contempt findings. This apparently demonstrated to the satisfaction of the court that the delays were fully in the control of the DPBH.

A hospital going over-census is potentially unsafe, and may involve patients sleeping on floors in living areas and overcrowding in hallways and eating areas. It may lead to an

increased risk for violence, suicide, and other serious harm. Obviously, a bed only becomes available when another client is successfully treated and discharged. This is as true in a 300-bed hospital as it is in a 50-bed facility.

Further, the time it takes to treat a patient to competency is largely outside the control of forensic hospital staff. The patient's diagnosis, if any, may be unclear, and comorbid medical conditions must be assessed and considered. Pure or partial malingering is a factor in a substantial number of cases in forensic settings, further complicating diagnosis and delaying treatment decisions. Finally, once a course of treatment is decided upon, consent may not be readily obtained, and forced-medication protocols may be needed, causing further delays.

Courts themselves may contribute to treatment and discharge delays. Hearings for forced medication may be delayed weeks or even months. Even hearings at the end of a patient's restoration - to legally determine their ultimate competency status - may be deferred due to busy court calendars and continuances for various reasons. Thus, various factors contribute to delays in transferring patients from jails to hospitals. Whether contempt findings and fines are effective at reducing transfer times in a safe and medically appropriate manner remains to be seen.

***The opinions expressed herein are those of the authors alone and do not represent the opinions of the University of Nevada, Reno or the Nevada DPBH.*

References

1. *State v. Gonzalez*, 123 Nev. Adv. Op. 45 (Sept. 14, 2023)
2. *Jackson v. Indiana*, 406 U.S. 715 (1972)
3. *Dept. of Health & Human Servs., Div. of Pub. & Behavioral Health v. Eighth Judicial Dist. Court*, 139 Nev., Adv. Op. 28, P.3d (2023)