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THE SUPREME COURT "Sells" CHARLES SINGLETON SHORT: WHY THE COURT SHOULD HAVE GRANTED CERTIORARI TO SINGLETON V. NORRIS AFTER REVERSING UNITED STATES V. SELL

INTRODUCTION

The State of Arkansas executed Charles Singleton by lethal injection on January 6, 2004. The Ashley County, Arkansas Circuit Court sentenced him to death following his 1979 conviction for the capital murder of Mary Lou York. Mr. Singleton’s guilt was not at issue because he murdered Ms. York in the neighborhood grocery store where she lived and worked and she lived long enough to identify Mr. Singleton as her attacker.

Mr. Singleton’s competence for execution, however, was considerably more ambiguous. His mental health began to decline noticeably after eight years on death row. He suffered from a psychiatric illness—most likely schizophrenia, a pervasive mental disorder characterized by psychotic symptoms such as hallucinations and delusions—and had a poor prognosis for full recovery. Although forcibly medicated and relatively stable on appeal, Mr. Singleton continued to exhibit psychotic symptoms that called his competency.

3. See id. Ms. York told a witness, “Patti go get help, Charles Singleton is killing me.” Id. She also told a police officer and treating physician that Charles Singleton stabbed her in York’s Grocery. See id.; see also Linda Satter, U.S. Justices Refuse Death-Row Appeal, ARK. DEMOCRAT-GAZETTE, Oct. 7, 2003, at 9, available at 2003 WL 62521782 (quoting Singleton’s jury foreman, “There wasn’t a shadow of a doubt that he was guilty.”).
4. See Singleton, 319 F.3d at 1021.
5. See Neil A. Lewis, U.S. Court Lets Stand Rulings on Executions; Justices Also Throw Out Cigarette Verdict, INT’L HERALD TRIB., Oct. 7, 2003, at 6, available at 2003 WL 64829323 (reporting that in 1987 Mr. Singleton suffered delusions that he shared his cell with demons and that his victim was alive).
6. See Singleton, 319 F.3d at 1031 (Heaney, J., dissenting); AM. PSYCHIATRIC ASS’N, DIAGNOSTIC & STATISTICAL MANUAL OF MENTAL DISORDERS 299 (4th ed. 2000) [hereinafter DSM-IV-TR]; Satter, supra note 3 (noting that Singleton was a “paranoid schizophrenic”).
into question. He referred to himself as "God" or "Holy Spirit" and believed that Sylvester Stallone and Arnold Schwarzenegger were trying to "save him."5

In 1986, the United States Supreme Court validated the common law rule that the state should not execute an insane offender in Ford v. Wainwright.6 However, Mr. Singleton's death sentence remained intact despite the perseverance of his psychotic symptoms.7 In reviewing Singleton's claim that the State of Arkansas could not force him to take psychiatric medication to render him competent for execution, the Eighth Circuit Court of Appeals relied primarily on its reasoning from United States v. Sell.8 There, the Eighth Circuit examined a defendant's right to be free from this type of medication when it results in his competency to stand trial.9 However, the United States Supreme Court overruled United States v. Sell and modified the test for this determination, effectively removing the underpinnings of the Eighth Circuit's decision in Singleton v. Norris.10 This change in precedent necessitates addressing the fate of mentally ill death row inmates after the Sell decision.11

Despite the significance of the Supreme Court's ruling in Sell v. United States12 and its potentially dramatic implications for Mr. Singleton's position, the Supreme Court denied his petition for certiorari on October 6, 2003 without comment.13 This denial eradicated any anticipation that Mr. Singleton's case might result in further legal developments regarding the status of mentally ill inmates, particularly those on death row.14 The Court's refusal to hear the appeal also placed Mr. Singleton's fate in the hands of Arkansas's

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7. See Singleton, 319 F.3d at 1031-32.
8. Id. Singleton's delusions also included beliefs that he was on a mission to battle homosexuals and that he miraculously survived a 1997 suicide attempt that never occurred. See id.
10. See Singleton, 319 F.3d at 1026-27.
11. See id. at 1024-25.
14. See id.
17. Satter, supra note 3.
Governor, the only remaining safeguard between Singleton and lethal injection.\textsuperscript{18} However, the Governor refused the clemency petition that Mr. Singleton’s attorney filed.\textsuperscript{19}

Part I of this Comment provides the background regarding the issue of forcibly medicating mentally ill inmates, including the primary cases and legal doctrines regarding the forcible use of psychiatric treatment in the inmate population. Part II discusses the application of the \textit{United States v. Sell} test to Charles Singleton’s case. Part III presents the concerns raised by \textit{Sell v. United States}, the new \textit{Sell} test, and the Supreme Court’s refusal to apply the new test to Mr. Singleton and others in his position. Finally, Part IV examines the codes of professional ethics that necessitate further consideration of forcing inmates to take psychiatric medication to render them competent for execution.

\textbf{I. BACKGROUND CASES}

\textbf{A. Ford v. Wainwright}\textsuperscript{20}

In \textit{Ford v. Wainwright}, the United States Supreme Court validated a long-standing common law rule that the state should not execute insane defendants.\textsuperscript{21} The State of Florida convicted Ford of murder and sentenced him to death.\textsuperscript{22} An examining psychiatrist diagnosed the defendant with symptoms consistent with paranoid schizophrenia, including delusions of friends and family being held hostage and calling himself “Pope John Paul, III.”\textsuperscript{23} Ford further believed the State could not execute him because he “owned the prisons and could control the Governor through mind waves.”\textsuperscript{24}

\begin{flushright}
\textsuperscript{18} \textit{Id.} (reporting that Arkansas Governor Mike Huckabee conscientiously reads the entire record before ultimately deciding whether to grant clemency).
\textsuperscript{19} Shurley, \textit{supra} note 1. Mr. Singleton’s attorney called the execution of his client, a paranoid schizophrenic stabilized only by medication, “a shameful mark on the [S]tate of Arkansas.” \textit{Id.}
\textsuperscript{20} 477 U.S. 399 (1986).
\textsuperscript{21} \textit{See id.} at 401, 417.
\textsuperscript{22} \textit{Id.} at 401.
\textsuperscript{23} \textit{See id.} at 402-03. The defendant also believed that he appointed Florida Supreme Court justices and that he was the subject of a conspiracy orchestrated in part by the Ku Klux Klan. \textit{See id.} at 402.
\textsuperscript{24} \textit{Id.} at 403.
\end{flushright}
A second examining psychiatrist concluded that Ford truly believed that the State could not execute him and that he did not comprehend the relationship between his crime and his pending execution. Following state law, Florida's Governor appointed three psychiatrists who interviewed Ford simultaneously for thirty minutes. Each psychiatrist determined that Ford had a different diagnosis, but all agreed that he was competent for execution. The Governor signed Ford's death warrant without further comment.

Writing for the majority, Justice Marshall recognized that multiple policies warn against executing the insane. First, these executions fail to serve the punishment goals of deterrence and retribution. Second, the state likely offends its citizens when it executes an incompetent defendant who cannot prepare for his death religiously. Third, the insanity serves as a punishment in itself, and the execution of an insane defendant is purely offensive. In concluding that the execution of insane inmates runs counter to the Constitution's cruel and unusual punishment prohibition, Justice Marshall wrote for the Court, "Whether its aim be to protect the condemned from fear and pain without comfort of understanding, or to protect the dignity of society itself from the barbarity of exacting mindless vengeance, the restriction finds enforcement in the Eighth Amendment."

In his concurring opinion, Justice Powell presented the test for determining if an insane defendant is ineligible for execution. The state should not execute defendants if they are not aware of either (1) the impending punishment or (2) the reason for the punishment.

25. Ford, 477 U.S. at 403.
26. Id. at 403-04.
27. See id. at 404.
28. Id.
29. See id. at 407-08.
30. See id. Executing an insane person fails to deter because it does not warn the public about the consequences of murder and fails to fulfill society's need for retribution because taking the life of one who does not understand what is happening does not equal the crime of murder. Ford, 477 U.S. at 407-08.
31. See id. at 407.
32. See id.
33. Id. at 410.
34. See id. at 422 (Powell, J., concurring).
35. Id. (Powell, J., concurring).
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B. Washington v. Harper

In Washington v. Harper, the United States Supreme Court considered whether a penal institution may forcibly treat a psychologically unstable inmate with psychotropic medication. The Court considered the inmate’s interest in being free from unwanted psychopharmacological agents and the state’s interest in its prisoners’ safety. Justice Kennedy, writing for the majority, concluded that the Due Process Clause of the United States Constitution’s Fourteenth Amendment allows a state to forcibly medicate a seriously mentally ill inmate with psychiatric medication “if the inmate is dangerous to himself or others and the treatment is in the inmate’s medical interest.”

C. Riggins v. Nevada

The U.S. Supreme Court also addressed forced psychiatric medication in Riggins v. Nevada. In Riggins, the question was whether involuntary administration of psychotropic medications to a criminal defendant and the associated side effects would impair the defendant’s right to a fair trial. The Court acknowledged that the defendant had a liberty interest in being free from involuntary psychotropic treatment and that the state could only overpower this liberty interest with an essential interest of its own. Applying the Harper standard, the Court ruled that state-mandated psychiatric

37. See id. at 218. This Comment uses “antipsychotic,” “psychotropic,” “psychiatric,” and “psychopharmacological” to indicate medication used to treat psychotic disorders. Although “psychotic” may have multiple meanings, the DSM-IV defines psychotic disorders to include mental illnesses whose symptoms include hallucinations or delusions. DSM-IV-TR, supra note 6, at 297.
38. See Harper, 494 U.S. at 221-23.
39. Id. at 227. But see id. at 237-40 (Stevens, J., concurring in part and dissenting in part) (discussing severe, irreversible side effects caused by some psychotropic drugs and asserting that the majority undervalued the liberty interest of freedom from this medication).
41. Id. at 132-33.
42. See id. at 133 (noting that the central issue involved whether the forced medication impaired the defendant’s right to a fair trial).
43. See id. at 134, 135 (stating that an “overriding justification and a determination of medical appropriateness” could outweigh an inmate’s liberty interest).
medication could satisfy due process requirements if “treatment with antipsychotic medication was medically appropriate and, considering less intrusive alternatives, essential for the sake of Riggins’ own safety or the safety of others.” The Court further noted that the side effects of this forced treatment could affect a defendant’s appearance, testimony, and ability to assist in his or her defense, potentially undermining the defendant’s right to a fair trial. The Court also said that the state may effectively defend forced psychiatric medication against a due process challenge if the treatment is medically appropriate and less invasive procedures would be ineffective in helping to determine the defendant’s innocence or guilt.

II. THE ORIGINAL SELL TEST APPLIED IN SINGLETON

A. United States v. Sell Develops a Test for Forced Medication

United States v. Sell brought before the Eighth Circuit the issue of using forced psychotropic medication to achieve an inmate’s competence to stand trial. The federal government indicted Sell for 56 counts of mail fraud associated with false Medicaid and private insurance claims for fictitious dental services. Although the district court initially found him competent to stand trial, Sell allegedly tried to harass a witness while released on bond. When subsequently brought before a magistrate judge, he exhibited unruly behavior and

44. Id. at 135.
45. See id. at 137. Justice Kennedy expressed this concern more directly in his concurring opinion, stating, “The side effects of antipsychotic drugs may alter demeanor in a way that will prejudice all facets of the defense.” Riggins, 504 U.S. at 142 (Kennedy, J., concurring). Justice Kennedy noted that the side effects of Riggins’ medication, Mellaril—which included Parkinson’s-like tremors, inhibited facial expressions, and significant sedation—could impact the trier of fact’s perception of the defendant, his ability to work with his attorney, and his capacity to testify in his own defense. See id. at 142-45 (Kennedy, J., concurring).
46. See id. at 135.
47. See United States v. Sell, 282 F.3d 560, 562 (8th Cir. 2002), vacated by 539 U.S. 166 (2003).
48. See id. at 562-63.
49. Id. at 563.
spit in the judge’s face. Mental health professionals who examined Sell diagnosed him with delusional disorder, persecutory type.

In a competency hearing, the district court ruled that Sell was not competent to stand trial and mandated hospitalization. His treating psychiatrists recommended psychotropic medication, and Sell countered that he did not want to receive the medicine and presented witnesses who testified that antipsychotic medication was not the best treatment for his diagnosis. A magistrate court ruled that Sell could be dangerous to himself or others and permitted the government to treat him involuntarily with the psychotropic medicine under a Harper order. The district court overturned the magistrate court’s finding of dangerousness but maintained the forced medication order because the government’s need to restore competency was enough to justify the forced treatment.

On appeal, the Eighth Circuit outlined a test to determine whether the government may forcibly medicate defendants with antipsychotic drugs to render them competent to stand trial without violating their due process rights. To treat a defendant involuntarily with psychotropic medication, the government must prove the following: (1) “an essential state interest that outweighs the individual’s interest in remaining free from medication,” (2) the lack of a less intrusive means of satisfying the “essential interest,” and (3) “by clear and convincing evidence that the medication is medically appropriate.”

50. Id.
51. Id. This is a disorder characterized by recurrent, nonbizarre delusions—untrue beliefs about events that could actually occur in real life but are not in fact happening. See id. at 563 n.3; DSM-IV-TR, supra note 6, at 324. “Persecutory type” is a specifier that indicates that a patient’s delusions predominately consist of beliefs that other people are treating the patient maliciously. Id. at 325. Sell suffered insomnia because he suspected FBI agents would charge into his home; the government charged him with plotting to hire someone to kill the arresting FBI agent and one of his former employees who was a government witness in the fraud case. Sell, 282 F.3d at 563.
52. Sell, 282 F.3d at 563.
53. See id. at 564.
54. See id. at 564–65; discussion supra Part I.B.
55. See Sell, 282 F.3d at 565.
56. Id. at 567.
57. Id. (internal citations omitted).
The Eighth Circuit listed three criteria for the test’s third element—medical appropriateness.\footnote{Id.} “Medication is medically appropriate if: (1) it is likely to render the patient competent . . .; (2) the likelihood and gravity of side effects do not overwhelm its benefits . . .; and (3) it is in the best medical interests of the patient.”\footnote{Id.} The court then applied the test to Sell and determined that the government could forcibly medicate him to “render[] him competent to stand trial.”\footnote{Id. at 572.}

B. The Eighth Circuit Applied the 2002 Sell Test in Singleton

The Eighth Circuit expressly limited its ruling in \textit{United States v. Sell}, stating that the test the court utilized there would likely not be appropriate in a case like Mr. Singleton’s where the government’s goal is to restore the inmate’s competence for execution rather than for trial.\footnote{Sell, 282 F.3d at 571. The court expressly stated, “Furthermore, we note that an entirely different case is presented when the government wishes to medicate a prisoner in order to render him competent for execution.” Id. The court also cited Mr. Singleton’s case as an example and warned that courts should apply the Sell test “narrowly.” Id.} In \textit{Singleton v. Norris}, the court acknowledged this limitation on \textit{Sell} but chose to apply the test anyway, violating its own cautionary limitation.\footnote{See Singleton v. Norris, 319 F.3d 1018, 1024-25 (8th Cir. 2003), cert. denied, 540 U.S. 832 (2003); see also Brian J. Kane, \textit{The Charles Singleton Dilemma: Sane Enough to Die?}. 28 LAW \\& PSYCHOL. REV. 149, 155 (2004) (describing the Eighth Circuit’s application of \textit{Sell} to Singleton’s case as “quite strange” and “a bold maneuver” given the \textit{Sell} court’s admonishment).}

First, in balancing the government’s interest in carrying out the death sentence against Mr. Singleton’s liberty interest in being free from the forced psychotropic medication, the court found the government’s interest superior.\footnote{Id. at 1025.} The court reasoned that “[s]ociety’s interest in punishing offenders is at its greatest in the narrow class of capital murder cases in which aggravating factors justify imposition of the death penalty.”\footnote{Id.} The significance of Mr. Singleton’s desire not to take the medication did not overcome society’s interest because he

\begin{thebibliography}{9}
\item Id.
\item Id.
\item Id. at 572.
\item Sell, 282 F.3d at 571. The court expressly stated, “Furthermore, we note that an entirely different case is presented when the government wishes to medicate a prisoner in order to render him competent for execution.” Id. The court also cited Mr. Singleton’s case as an example and warned that courts should apply the Sell test “narrowly.” Id.
\item See Singleton v. Norris, 319 F.3d 1018, 1024-25 (8th Cir. 2003), cert. denied, 540 U.S. 832 (2003); see also Brian J. Kane, \textit{The Charles Singleton Dilemma: Sane Enough to Die?}. 28 LAW \\& PSYCHOL. REV. 149, 155 (2004) (describing the Eighth Circuit’s application of \textit{Sell} to Singleton’s case as “quite strange” and “a bold maneuver” given the \textit{Sell} court’s admonishment).
\item Id. at 1025.
\item Id.
\end{thebibliography}
had not suffered significant side effects and had expressed a preference to taking the medication rather than suffering from psychotic symptoms.\textsuperscript{65}

Next, the court turned to whether there was a less intrusive way to restore Mr. Singleton's competence than through psychopharmacological treatment.\textsuperscript{66} Because Mr. Singleton had not presented the court with an alternative to psychotropic medication and because his psychotic symptoms would likely resume without the treatment, the court concluded that the medicine was necessary to ease his psychotic symptoms and that there was no less intrusive way to achieve this result.\textsuperscript{67}

Finally, the court addressed the most controverted issue in Mr. Singleton's argument—whether the forced medication was in his best medical interest.\textsuperscript{68} The court quickly dismissed the first two elements of this prong of the test and concluded that the treatment restored his competence.\textsuperscript{69} The court decided that Mr. Singleton suffered from no unwanted side effects that could counter the benefits of the medicine.\textsuperscript{70}

Mr. Singleton's primary argument was that the forced administration of antipsychotic medication could not possibly meet

\textsuperscript{65} See id.
\textsuperscript{66} See id.
\textsuperscript{67} See id.
\textsuperscript{68} See Singleton, 319 F.3d at 1025.
\textsuperscript{69} See id. at 1025-26. The court stated that Mr. Singleton's psychosis was "almost completely under control since the initiation of the [most recent] mandatory medication regime in 1997" and that he had "repeatedly conceded his competence while medicated." Id. at 1026. However, the dissenting judge noted that Mr. Singleton displayed psychotic symptoms even while forcibly medicated—he had active delusions and hallucinations during a two-month evaluation period in 2000. Id. at 1032 (Heaney, J., dissenting). Whereas a lack of medication two months prior to the evaluation may have contributed to his psychotic condition, the examining psychologist stated that, although Mr. Singleton could essentially recount his sentence and the reason for his execution, he lacked a rational comprehension of what he was saying. Id. at 1032-33. The psychologist further cast doubt on Mr. Singleton's competence with medication, stating in his deposition, "[H]e may not be currently competent from what I was seeing." Id. at 1033. This is similar to the defendant's situation in Ford v. Wainwright, where at times he acknowledged the death penalty but his psychosis prevented a rational understanding of the reality of his situation. See Ford v. Wainwright, 477 U.S. 399, 403 (1986); see also Lisa N. Jones, Singleton v. Norris: The Eighth Circuit Maneuvered Around the Constitution by Forcibly Medicating Insane Prisoners to Create an Artificial Competence for Purposes of Execution, 37 CREIGHTON L. REV. 431, 462 (2004) (noting that although Singleton and Ford had similar symptoms, the Eighth Circuit found Singleton competent for execution and the Supreme Court found Ford was not).
\textsuperscript{70} See Singleton, 319 F.3d at 1026.
the third element of the medically appropriate prong because rendering him competent for execution was not in his medical best interest. 71 Mr. Singleton’s counsel recommended that the court stay his execution until he did not require forced antipsychotic medicine to be competent for the state to carry out his sentence. 72 The court rejected this alternative, stating that Mr. Singleton’s only complaint with regard to the forced treatment was that it rendered him qualified for the death sentence. 73 The court ruled that the establishment of the date of execution did not undermine the constitutionality of an otherwise appropriate forced treatment regimen under Harper since the court must consider Mr. Singleton’s medical interests independent of the execution date. 74

III. THE SUPREME COURT’S DECISION IN SELL V. UNITED STATES AND THE COURT’S FAILURE TO APPLY IT IN SINGLETON

A. The Supreme Court Overturns the Eighth Circuit’s Ruling in Sell

Sell appealed the Eighth Circuit’s affirmation of the district court’s decision to medicate him forcibly to achieve trial competence. 75 After deciding that the court of appeals properly exercised its appellate jurisdiction, the Supreme Court discussed its own decisions in Harper and Riggins. 76 The Court found that a state may involuntarily treat a defendant with psychotropic medication to render him competent for trial without violating the Fifth Amendment’s Due Process Clause in specific situations but acknowledged that these situations “may be rare.” 77 The Court then outlined the appropriate test that courts should use for these cases. 78

71. See id. at 1026; Appellant’s Opening Brief, 2000 WL 33983423 at *34, Singleton v. Norris, 267 F.3d 859 (8th Cir. 2001) (No. 00-1492).
72. Singleton, 319 F.3d at 1026; Appellant’s Opening Brief, 2000 WL 33983423 at *28, Singleton (No. 00-1492).
73. Singleton, 319 F.3d at 1026.
74. See id.
76. See id. at 177-82.
77. Id. at 180.
78. See id. at 180-82.
The Court’s first criterion is that “important governmental interests are at stake.” The Court identified the state’s interest in adjudicating cases where the government has charged the defendant with serious crimes against persons or property as an important one. However, the Court also cautioned that some circumstances may diminish the strength of that interest. These factors included the possibility that: (1) long-term confinement in a residential mental health facility may attenuate the concern that a criminal may avoid punishment, (2) evidence may become stale due to passage of time, (3) the defendant may have served a substantial portion of his eventual sentence, and (4) the forced medication may compromise the defendant’s guarantee of a fair trial.

Second, the Court stated that a trial court “must conclude that involuntary medication will significantly further those . . . state interests.” The Court advised that it must be significantly probable that the forced psychiatric treatment will result in the defendant’s competence without causing side effects that would likely impair the fairness of his trial. Third, the forced treatment must be “necessary to further” the state interests. The Court explained that the lower courts must determine that there are no less invasive means that would likely render the defendant competent and that they must consider less obtrusive ways to provide the treatment. Fourth, the forced psychiatric medication must be medically appropriate, which the Court defined as “in the patient’s best medical interests in light of his medical condition.” The Court indicated that the particular medication used is of significant importance because side effects and efficacy may affect the treatment’s appropriateness.

79. Id. at 180.
80. See id.
81. See Sell, 539 U.S. at 180.
82. Id.
83. Id. at 181.
84. See id. (citing Justice Kennedy’s concurrence from Riggins).
85. Id.
86. See id.
87. Sell, 539 U.S. at 181.
88. See id.
The Court also expressed a preference that, before applying this test, a court should decide whether the state could successfully defend the forced medication order on other grounds. Specifically, the Court indicated that, if the state could legally force psychiatric medication because the defendant is dangerous to himself or others, the government may involuntarily treat the defendant independent of the competency to stand trial test.

The Court found that the Eighth Circuit erred in ruling that the state could involuntarily medicate Sell under a competency to stand trial standard. The Court reasoned that the magistrate court originally approved the forced treatment because it found Sell dangerous under the Harper standard. Consequently, the trial court did not adequately consider competency issues, such as how side effects may impair his right to a fair trial, but instead focused primarily on dangerousness. Also, the trial court failed to consider the length of time Sell had spent incarcerated and the likelihood of additional imprisonment if he continued to refuse treatment. Therefore, the Court overturned the forced medication order and remanded the case for reconsideration using the trial competency test, the dangerousness standard, or both.

B. Applying the New Sell Test to Mr. Singleton's Case

Despite modifying the test for competence that the Eighth Circuit heavily relied upon in its decision to forcibly medicate Mr. Singleton independent of his execution date, the Supreme Court declined the

89. See id. at 181-82.
90. Id. The Court noted that the test for dangerousness is more "objective and manageable" than the trial competency test, and even if the defendant is not dangerous, the previous inquiry into dangerousness will assist a court in its determination of competency. Id. at 182. The Court concluded:

We consequently believe that a court, asked to approve forced administration of drugs for purposes of rendering a defendant competent to stand trial, should ordinarily determine whether the Government seeks, or has first sought, permission for forced administration of drugs on these other Harper-type grounds; and, if not, why not.

Id. at 183.
91. See Sell, 539 U.S. at 185.
92. See id. at 183; discussion supra Part I.B.
93. See Sell, 539 U.S. at 185.
94. See id. at 186.
95. See id.
opportunity to clarify how courts should rule in cases concerning inmates in Mr. Singleton's position when it denied his petition for certiorari.\(^6\) If the Court had accepted the opportunity to provide the final resolution of this issue, the Court may have decided Mr. Singleton's fate differently under its own logic in *Sell v. United States*. This section will show how the Court may have applied the new *Sell* test to Mr. Singleton's case.

The first element of the new *Sell* test requires an "important governmental interest[]."\(^7\) On appeal, the state would have likely argued that there was an important interest in carrying out Mr. Singleton's death sentence for capital murder, just as the Eighth Circuit recognized the state's essential interest in punishing capital murder in *Singleton v. Norris*.\(^8\) Moreover, the Court in *Sell* acknowledged that adjudicating serious crimes against people is an important interest.\(^9\) However, the Court identified one extenuating circumstance applicable to Mr. Singleton that may have weakened the state's interest: Long-term incarceration may abate the concern that a criminal may avoid serving his punishment.\(^10\) Here, there was no risk that the state would have released Mr. Singleton if it was unable to execute him due to his psychiatric condition because, if the state did not execute him, he would have remained incarcerated for the rest of his life.\(^11\) Therefore, the Court's new guidance in *Sell* somewhat diminishes the state's interest.\(^12\)

Second, the new *Sell* test requires a finding that forced psychiatric treatment will significantly advance the state's interest.\(^13\) The majority in *Singleton v. Norris* quickly resolved a roughly

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97. *Sell*, 539 U.S. at 180 (emphasis omitted).
98. See *Singleton*, 319 F.3d at 1025 ("That the government has an essential interest in carrying out a lawfully imposed sentence cannot be doubted." (quoting Moran v. Burbine, 475 U.S. 412, 426 (1986))).
99. See *Sell*, 539 U.S. at 180.
100. See id.
102. See *Sell*, 539 U.S. at 180 (discussing factors which may diminish the state's interest in execution).
103. Id. at 181.
comparable issue, finding that the medication rendered Mr. Singleton competent.\textsuperscript{104} However, the dissent presented some evidence from the record that the majority opinion omitted, including documented psychotic episodes during periods of involuntary medication.\textsuperscript{105} For example, despite a regimen of forced psychiatric medication, Mr. Singleton exhibited delusions in 1993 that he was under a voodoo curse and had hallucinations that his food became worms and that his cigarettes transformed into bones.\textsuperscript{106} Further, an examining psychologist expressed doubt in 2000 that Mr. Singleton was competent while medicated because he referred to himself as the “Holy Spirit,” said that God requested he write a book, and exhibited disorganized thinking.\textsuperscript{107} The psychologist concluded that Mr. Singleton would certainly be psychotic without his medication and was possibly incompetent despite forced psychotropic treatment.\textsuperscript{108} Therefore, satisfaction of the prong regarding whether forced psychiatric medication will significantly further the state’s interest is at least questionable.\textsuperscript{109}

Third, under the new \textit{Sell} test, a court must determine that the involuntary psychopharmacological treatment is essential to promote the state’s interests and that less intrusive alternatives are unlikely to achieve results.\textsuperscript{110} The majority in \textit{Singleton v. Norris} quickly concluded that psychotropic medication was essential to treat Singleton’s mental illness effectively and that less intrusive measures

\textsuperscript{104} See \textit{Singleton v. Norris}, 319 F.3d 1018, 1025-26 (8th Cir. 2003), \textit{cert. denied}, 540 U.S. 832 (2003). The court noted, “Singleton’s symptoms have been kept almost completely under control since the initiation of the mandatory medication regime in 1997, and he has repeatedly conceded his competence while medicated.” \textit{Id.} at 1026.

\textsuperscript{105} See \textit{id.} at 1031 (Heaney, J., dissenting).

\textsuperscript{106} \textit{Id.} (Heaney, J., dissenting).

\textsuperscript{107} \textit{Id.} at 1032 (Heaney, J., dissenting).

\textsuperscript{108} \textit{Singleton}, 319 F.3d at 1032-33 (Heaney, J., dissenting) (noting that the psychologist stated in his deposition that “[Singleton] may not be currently competent from what I was seeing”). Although a brief lapse in treatment two months prior to the psychologist’s evaluation may have contributed to the psychosis, the examiner opined that Mr. Singleton’s psychiatric condition was irreversibly deteriorating. \textit{See id.} at 1033 (Heaney, J., dissenting). The psychologist explained in his deposition, “[O]nce they’re medicated, once their mental status is restored, they may not come back to the prior level of functioning they had before the last decompensation.” \textit{Id.} (Heaney, J., dissenting).

\textsuperscript{109} See \textit{id.} at 1032-33 (Heaney, J., dissenting) (expressing doubt that forced psychotropic medication effectively restored Mr. Singleton’s competence).

would not likely be helpful.\textsuperscript{111} However, the dissent questioned whether the forced use of antipsychotic treatment would in fact be successful in treating Mr. Singleton's psychotic disorder.\textsuperscript{112} Judge Heaney discussed the contention that psychotropic medications do not cure a psychotic patient of the disorder but rather render him "artificial[ly]" competent.\textsuperscript{113} This treatment's efficacy in managing Mr. Singleton's psychotic symptoms was questionable because the treatment failed to result in sustained emancipation from psychosis.\textsuperscript{114} Judge Heaney, joined in his dissent by three other Eighth Circuit judges, resolved, "I am left with no alternative but to conclude that drug-induced sanity is not the same as true sanity. Singleton is not 'cured;' his insanity is merely muted, at times, by the powerful drugs he is forced to take. Underneath this mask of stability, he remains insane."\textsuperscript{115} Therefore, the contention that Mr. Singleton's treatment regimen failed to ameliorate his mental illness effectively was not as easily discountable as the majority determined.\textsuperscript{116}

Further, the majority in \textit{Singleton v. Norris} essentially ignored Mr. Singleton's proffered alternative that may have achieved the state's interest.\textsuperscript{117} Singleton's counsel suggested that the court grant him a stay of execution until the state no longer needed to forcibly medicate him to make him competent.\textsuperscript{118} However, the court merely acknowledged this option without further discussing its merits.\textsuperscript{119}

Finally, the fourth element of the new \textit{Sell} test requires that the treatment be medically appropriate.\textsuperscript{120} The Court in \textit{Sell}'s case

\textsuperscript{111} See \textit{Singleton}, 319 F.3d at 1025 (discussing the necessity of antipsychotic medication to treat Singleton's disorder and a lack of effective alternatives only briefly before addressing medical appropriateness).
\textsuperscript{112} See id. at 1033 (Heaney, J., dissenting).
\textsuperscript{113} Id. at 1034 (Heaney, J., dissenting).
\textsuperscript{114} See id. (Heaney, J., dissenting).
\textsuperscript{115} Id. (Heaney, J., dissenting).
\textsuperscript{116} See id. (Heaney, J., dissenting).
\textsuperscript{117} See \textit{Singleton}, 319 F.3d at 1026.
\textsuperscript{118} Id. Singleton's advocates proposed this solution for the court: "This court should stay the execution unless and until such time as Singleton has achieved competency to be executed without the involuntary administration of medication." Appellant's Opening Brief, 2000 WL 33983423 at *28, Singleton v. Norris, 267 F.3d 859 (8th Cir. 2001) (No. 00-1492).
\textsuperscript{119} See \textit{Singleton}, 319 F.3d at 1026.
\textsuperscript{120} Sell v. United States, 539 U.S. 166, 181 (2003).
offered significantly less guidance on this element than did the Eighth Circuit.\footnote{Compare Sell, 539 U.S. at 181 (stating only one consideration to determine medical appropriateness), with United States v. Sell, 282 F.3d 560, 567 (8th Cir. 2002) (listing three factors to determine if the treatment is medically appropriate).} However, the Court addressed two of the Eighth Circuit’s three factors for determining medical appropriateness elsewhere in the Court’s new \textit{Sell} test, leaving the patient’s best medical interest as the only common consideration in both the Eighth Circuit and the Court’s medical appropriateness element.\footnote{Compare Sell, 539 U.S. at 181 (stating that the trial court must find that the forced treatment is “substantially likely to render the defendant competent” and “unlikely to have side effects that will interfere significantly” with the defendant’s right to a fair trial), with \textit{Sell}, 282 F.3d at 567 (indicating that the first two factors of medical appropriateness are that the treatment is “likely to render the patient competent” and that the severity and probability of side effects “do not overwhelm its benefits”).} Although the Eighth Circuit in \textit{Singleton v. Norris} determined that a court must consider the inmate’s best interests independent of the execution date, the Supreme Court in \textit{Sell v. United States}, not faced with a death penalty case, only indicated that a court must consider the patient’s medical condition.\footnote{Compare \textit{Sell}, 539 U.S. at 181 (stating that medical appropriateness indicates consideration of the defendant’s “best medical interest in light of his medical condition”), with \textit{Singleton}, 319 F.3d at 1026 (“In the circumstances presented in this case, the best medical interests of the [defendant] must be determined without regard to whether there is a pending date of execution.”).}

Here, Mr. Singleton’s medical condition was a psychotic disorder, most likely schizophrenia.\footnote{See \textit{Singleton}, 319 F.3d at 1031 (Heaney, J., dissenting).} On appeal, Mr. Singleton’s counsel argued that forced psychiatric medication was inconsistent with his best interests when the effect was to “render[] [him] competent for execution.”\footnote{\textit{Id.} at 1026.} The Eighth Circuit rejected that argument, and the court’s determination probably satisfied the bare requirement of the new \textit{Sell} test because the court considered Mr. Singleton’s psychiatric condition in determining whether the state should forcibly administer antipsychotic medication.\footnote{See \textit{Sell}, 539 U.S. at 181 (stating that courts should take an inmate’s medical condition into account when considering medical appropriateness); \textit{Singleton}, 319 F.3d at 1025-26.}

However, Judge Heaney’s dissent agreed with Mr. Singleton that the state does not serve the defendant’s best interests by rendering
him competent for execution. Further, Judge Heaney stated that the state’s motives for forcibly medicating Mr. Singleton included not only protecting Mr. Singleton and others under *Harper*, but also a desire to implement his execution. Therefore, a state’s motive may be consistent with the inmate’s best medical interest in one sense while ultimately running counter to his overall best interests. It is unclear from the Supreme Court’s medically appropriate standard in *Sell* whether a court can justify its decision to allow involuntary psychiatric treatment when the state’s motives include an ultimate desire to take the patient inmate’s life.

Although not listed as a criterion in the *Sell* test, the Supreme Court unequivocally advised that a trial court should determine whether the state has forcibly medicated an inmate under a *Harper* dangerousness order before applying the *Sell* competency test. The Court indicated that the application of the competency test is likely unnecessary when an inmate is dangerous to himself or others under the *Harper* standard.

The State of Arkansas forcibly medicated Mr. Singleton in 1997 under his most recent *Harper* order. Singleton’s doctors did not renew the order in 2000, but he continued to take his medication voluntarily. However, Mr. Singleton disputed that he was

127. See *Singleton*, 319 F.3d at 1036 n.11 (Heaney, J., dissenting) (“Unlike the majority, I am not convinced that forced medical treatment is in Singleton’s best medical interest when it may ultimately result in his execution.”).
128. *Id.* at 1036 (Heaney, J., dissenting). The judge stated:
   An inquiry into the State’s motivation is unhelpful, for it presupposes a single, directed motivation, which is not the case here. In fact, the evidence suggests two competing interests: the welfare of the prison, and the execution of the prisoner’s sentence. At the very least, the setting of an execution date calls into question the State’s true motivation for administering the medication in the first instance.

*Id.* (Heaney, J., dissenting).
129. See *Singleton*, 319 F.3d at 1036 n.11 (Heaney, J., dissenting).
130. See *Sell*, 539 U.S. at 181 (demonstrating a failure to specifically address how to apply the medically appropriate standard).
131. *See id.* at 181-82.
132. *See id.* at 181-83. The Court noted, “If a court authorizes medication on these alternative grounds, the need to consider authorization on . . . competence grounds will likely disappear.” *Id.* at 183.
133. *Singleton*, 319 F.3d at 1022; *see also id.* at 1031 (Heaney, J., dissenting) (indicating that the state forcibly medicated Mr. Singleton from 1991 to 1995).
134. *Id.* at 1022.
voluntarily accepting the treatment. His counsel argued that the mere fact that he did not physically oppose the treatment did not mean he was voluntarily taking the medication; instead, they contended that Mr. Singleton "was not offering physical resistance because it would be futile."

Nonetheless, the fact that the state treated Mr. Singleton involuntarily under Harper would likely be of some consequence to the Supreme Court. Because the Harper review panel concluded that Mr. Singleton was a danger to himself or others even in the confines of a prison environment, he may not be eligible for the full competency test under Sell. However, the Court's refusal to clarify itself in denying certiorari deprived Mr. Singleton and lower courts of knowing how the Court may have treated him under Sell's new standards and guidance.

IV. ETHICAL CODES RAISE IMPORTANT CONSIDERATIONS

A. The American Medical Association Code of Ethics

The American Medical Association Code of Medical Ethics ("AMA Code") consists of professional standards that describe the requirements for ethical conduct by physicians. Though not legally binding, the standards serve as guidelines for the ethical practice of medicine.

136. Id. Mr. Singleton's counsel also speculated that the confusion over whether the state was forcibly medicating Mr. Singleton at all times may have contributed to the Supreme Court's denial of certiorari because the case may have been "less ripe" for Supreme Court review. Satter, supra note 3.
137. See Sell, 539 U.S. at 181-83.
138. See id. at 182-83; Singleton, 319 F.3d at 1021.
139. See Singleton v. Norris, 540 U.S. 832 (2003); Satter, supra note 3; see also Sell, 539 U.S. at 180-83 (discussing the new standards and importance of dangerousness); Melinda S. Campbell, Death Penalty Symposium: Comment: Sell, Singleton, and Forcible Medication—Running Roughshod Over Liberty, 35 U. TOL. L. REV. 691, 713 (2004) (noting that the Supreme Court's denial of certiorari in Singleton left "lower courts to muddle through the issue without guidance from the nation's highest court").
140. See AM. MED. ASS'N, MEDICAL ETHICS: CODES, OPINIONS, & STATEMENTS 841 (Baruch A. Brody et al. eds., 2000) [hereinafter CODES, OPINIONS, & STATEMENTS].
141. Id.
According to the AMA Code, "A physician, as a member of a profession dedicated to preserving life when there is hope of doing so, should not be a participant in a legally authorized execution." The AMA Code also states that a physician should refrain from treating a condemned prisoner who lacks competency for execution if that treatment will restore competency. The AMA Code provides an exception, allowing physicians to treat these inmates if the government commutes their sentences from death to imprisonment. Further, the AMA Code states that a physician may treat a condemned, incompetent inmate whose psychotic distress is acute if the treatment's intention is merely to relieve the psychological anguish.

The forced psychiatric medication of death row inmates poses a unique ethical dilemma for treating physicians. The circumstances surrounding a mentally ill, condemned patient force the physician to choose between treating the inmate to alleviate psychotic symptoms, therefore participating in restoring an inmate's competency for
execution, and withholding treatment, thus forcing the patient to suffer from psychosis that medication may easily alleviate.  

The difficulty of determining the point where psychiatric treatment becomes assistance to the state in executing the patient exacerbates the physician’s quandary.  

Although the physician is not actually injecting the inmate with poison, providing involuntary psychiatric medication expedites the process that ultimately results in the patient’s state-sanctioned death.  

Another factor compounding the physician’s ethical dilemma is the contention that psychotropic medication does not render patients sane but merely suppresses their psychotic symptoms.  

Mr. Singleton’s counsel argued on appeal that, when a physician participates in treatment to restore competency for execution, the goal of treatment changes from promoting health to facilitating execution.  

Mr. Singleton argued that, “[o]n balance, the arguments weigh generally against treatment to restore competence because the prisoner would be considered worse off with treatment and execution than to continue without treatment.”  

Although not legally binding, the AMA Code’s impact on Supreme Court jurisprudence is significant. In Washington v. Glucksberg, the Supreme Court recognized the significance of the AMA Code. There, the Court considered whether assisted suicide for the terminally ill was a liberty interest under the United States

147. See Singleton, 319 F.3d at 1037 (Heaney, J., dissenting).
148. See Satter, supra note 3 (citing Jonathan Entin, constitutional law professor, who described the difficulty of determining where psychiatric treatment becomes facilitating an execution in Mr. Singleton’s situation).
149. Id.
150. See id.; see also discussion supra Part III.B.
151. Appellant’s Opening Brief, 2000 WL 33983423 at *33-34, Singleton (No. 00-1492).
152. Id. at *34.
153. See Singleton v. Norris, 319 F.3d 1018, 1037 (8th Cir. 2003), cert. denied, 540 U.S. 832 (2003) (Heaney, J., dissenting) (discussing the importance that the Court has given the American Medical Association Code of Medical Ethics (“AMA Code”) in previous opinions); CODES, OPINIONS, & STATEMENTS, supra note 140, at 841 (acknowledging the lack of legal force of the AMA Code); see also Washington v. Harper, 494 U.S. 210, 222 n.8 (1990) (noting the influence of the APA’s ethics in the Court’s decision-making).
155. See id. at 731.
Constitution's Due Process Clause. In finding no liberty interest in assisted suicide, the Court considered, among other things, the state's "interest in protecting the integrity and ethics of the medical profession." The Court noted that the AMA Code stated that physician-assisted suicide is unethical, and the Court acknowledged the concern that the practice could harm the doctor-patient relationship.

B. The AMA Code's Implications for Mr. Singleton and Future Mentally Ill Death Row Inmates

The AMA Code would likely have influenced the Supreme Court's decision if it had granted certiorari in Singleton v. Norris. Although the Court has remained silent on this issue, the AMA Code has not; it expressly states that physicians should not participate in the forced medication of mentally ill death row inmates to restore their competency for execution. By using physicians as catalysts in achieving competence for execution, the state is asking medical professionals to break their own ethical code.

The Court has given the AMA Code considerable weight when a legal issue intersects with the ethics of medical practice. The ethical quandary that Mr. Singleton's position places upon medical professionals is not merely a collateral matter that courts should easily dismiss, but instead, it is a valid policy concern because "courts have long recognized the integrity of the medical profession as an appropriate consideration in its decision-making process." Because of the Court's refusal to grant certiorari, however, the

156. Id. at 723.
157. Id. at 731.
158. See id.; see also Singleton, 319 F.3d at 1037 (Heaney, J., dissenting) (citing Glucksberg as support for the judicial consideration of medical ethics).
159. See Appellant's Opening Brief, 2000 WL 33983423 at *33-34, Singleton v. Norris, 267 F.3d 859 (8th Cir. 2001) (No. 00-1492) (discussing ethical arguments in favor of Mr. Singleton); see also Glucksberg, 521 U.S. at 731.
160. See discussion supra Part IV.A.
161. See discussion supra Part IV.A.
162. See Glucksberg, 521 U.S. at 731.
163. Singleton, 319 F.3d at 1037 (Heaney, J., dissenting).
precise impact that the AMA Code may have on the ultimate resolution of this issue remains unclear.\textsuperscript{164}

CONCLUSION

The Supreme Court ruled in \textit{Ford v. Wainwright} that the state cannot execute an insane inmate because this would serve none of the goals of punishment.\textsuperscript{165} Like the mentally ill inmate in \textit{Ford}, Charles Singleton acknowledged his death sentence but appeared to lack a reality-based understanding of its implications, even when medicated.\textsuperscript{166} Yet, the Eighth Circuit determined that the state may execute Singleton while involuntarily administering antipsychotic medication in an attempt to restore competence.\textsuperscript{167} Nonetheless, the likelihood of successfully returning Mr. Singleton to competence was questionable at best.\textsuperscript{168}

The conclusion that the Eighth Circuit reached is arguably not as controversial as the means that it used to make this decision.\textsuperscript{169} First, the Eighth Circuit ignored its own limitation in \textit{United States v. Sell}, the case where that court initially developed its competency standard.\textsuperscript{170} The court chose to apply its own \textit{Sell} competency-to-stand-trial test to the question of whether Mr. Singleton was competent for execution despite expressly indicating in its \textit{Sell} opinion that courts should not do this.\textsuperscript{171} Then, applying its test, the Eighth Circuit decided that forcibly administering psychopharmacological medication to Mr. Singleton was in his medical best interest even though it would ultimately result in his death.\textsuperscript{172}

\textsuperscript{165} See discussion supra Part I.A.
\textsuperscript{166} See supra note 69.
\textsuperscript{167} See discussion supra Part II.B.
\textsuperscript{168} See supra notes 103-08 and accompanying text.
\textsuperscript{169} See discussion supra Part II.B.
\textsuperscript{170} See supra notes 61-62 and accompanying text.
\textsuperscript{171} See supra notes 61-62 and accompanying text.
\textsuperscript{172} See supra notes 63-74 and accompanying text.
The Supreme Court then granted certiorari in *Sell* and significantly altered the test for competency to stand trial.\(^{173}\) Despite the likelihood that the change in the standards for competency determination may have resulted in a stay of execution, the Supreme Court denied Mr. Singleton’s certiorari petition.\(^{174}\)

The denial of certiorari leaves advocates, civil rights groups, and legal scholars to predict how the Supreme Court may have applied its new *Sell* test to Mr. Singleton. It is possible that Mr. Singleton’s continued imprisonment, if granted a stay of execution, would have diminished the state’s interest in carrying out Mr. Singleton’s sentence.\(^{175}\) Further, due to Mr. Singleton’s continued psychosis despite treatment, the forced medication’s ability to advance the state’s interest in restoring competency is uncertain.\(^{176}\) Additionally, the forced treatment might not have been essential to furthering the state’s interests because it is unclear whether the psychotropic drugs actually treated Mr. Singleton’s disease or merely disguised his symptoms.\(^{177}\) Also, there is doubt that forced treatment can be in an inmate’s best interest when it indirectly results in execution.\(^{178}\)

However, analysis of Mr. Singleton’s case may not even require application of the new competency test outlined by the Supreme Court because the Court indicated that applying this test may be unnecessary if an inmate’s dangerousness to himself or others justifies forced treatment.\(^{179}\) However, without a definitive ruling by the Supreme Court, all of the concerns that it raised by overturning *Sell v. United States* remain unanswered.\(^{180}\)

Moreover, by denying certiorari, the Supreme Court has neglected the ethical dilemma of physicians asked to forcibly treat inmates to render them competent for execution.\(^{181}\) Notwithstanding the

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173. *See discussion supra* Part III.A.
174. *See supra* note 96 and accompanying text.
175. *See supra* notes 100-02 and accompanying text.
176. *See supra* notes 105-08 and accompanying text.
177. *See supra* notes 111-16 and accompanying text.
178. *See supra* notes 125-29 and accompanying text.
179. *See supra* notes 131-32 and accompanying text.
180. *See discussion supra* Part III.B.
181. *See discussion supra* Part IV.
previous consideration it has given to the AMA Code, the Supreme Court’s denial of certiorari threatens the integrity of physician’s ethics because the current state of the law requires the government to ask physicians to explicitly break their ethical code.\footnote{See discussion supra Part IV.}

The Supreme Court could have answered and considered all of these questions and issues by granting certiorari to \textit{Singleton v. Norris}. Mr. Singleton’s attorney hypothesized that the Court may have refused to hear the case because his client had voluntarily participated in his treatment at times, making the facts of this case not ideal for the Court to rule on these matters.\footnote{See supra note 136 and accompanying text.} Consequently, while the Court waited for the perfect case to speak on whether a state can circumvent \textit{Ford} and execute the insane by forcing them into a debatable state of sanity, the State of Arkansas executed Charles Singleton, a paranoid schizophrenic.\footnote{See discussion supra Part I.A; supra text accompanying notes 1, 6.} A man’s life hung in the balance, the physicians’ ethical code lay in jeopardy, and the legal community can now only hypothesize about how to handle forcible medication of death row inmates. The Supreme Court should break its silence and give ultimate guidance on this issue.

\textit{Jeremy P. Burnette}