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SUPREME COURT OF NORTH CAROLINA

STATE OF NORTH CAROLINA,)
)
)
)
)
CAROLYN D. "BONNIE" SIDES,)
)
Defendant)
)
)
)

From CABARRUS COUNTY
No. COA 18-1016

BRIEF OF AMICI CURIAE

Pursuant to Rule 28(i) of the North Carolina Rules of Appellate Procedure, Disability Rights North Carolina, the North Carolina Psychiatric Association, and the North Carolina chapter of the National Alliance on Mental Illness submit this brief as amici curiae in support of Defendant.¹

NATURE OF APPLICANTS' INTERESTS

Disability Rights NC ("DRNC"), the North Carolina Psychiatric Association, and the North Carolina chapter of the National Alliance on Mental Illness ("NAMI-

¹ No other person or entity, other than Disability Rights NC, the North Carolina Psychiatric Association and NAMI-NC, their members, or their counsel, directly or indirectly, either wrote this brief or contributed money for its preparation.

NC”) request to participate in this matter as amici curiae to discuss the impact this Court’s ruling may have on the many people our State who have a mental illness.

DRNC is North Carolina’s designated Protection and Advocacy System (“P&A”). DRNC is authorized by federal law to protect and advocate for the rights of individuals with disabilities. See Protection and Advocacy for Individuals with Mental Illness (“PAIMI Act”), 42 U.S.C. § 10801 *et seq.* The federal regulations governing the PAIMI Act mandate that, as the P&A, DRNC is empowered to “pursue administrative, legal or other appropriate remedies to protect and advocate on behalf of individuals with mental illness to address abuse, neglect or other violations of rights.” 42 C.F.R. § 51.31(a). DRNC’s interest in the present case is to advocate for the legal rights and interests of North Carolinians with disabilities to have equal access to the courts.

The North Carolina Psychiatric Association was founded in 1935 and is a professional medical organization that represents over 900 psychiatrists statewide. The mission of the North Carolina Psychiatric Association is to promote the highest quality of care for North Carolinians with mental illness, to advance and represent the profession of psychiatry and medicine in North Carolina, and to serve the professional needs of members. The North Carolina Psychiatric Association seeks to improve access to care for people with mental illness, including addressing barriers to treatment, such as stigma and stereotypes. The North Carolina Psychiatric Association’s interest in this case is to enhance the Court’s understanding of the role

of mental illness in the context of suicide attempts and to address misconceptions about the voluntariness and nature of mental illness and suicidal ideation.

NAMI-NC has worked for 35 years to raise awareness and provide advocacy, education, and support so people affected by mental illness can build better lives. NAMI-NC works to improve North Carolina's mental health systems, end discrimination, promote equal treatment, and reduce barriers for people with mental illness. NAMI-NC's interest in this case is to promote greater understanding of mental illness and to ensure parity in the treatment of mental illness and physical illness.

ARGUMENT

Summary of Argument

Suicide attempts are often the product of mental illness. Despite the passage of the Americans with Disabilities Act thirty years ago and progress regarding the popular understanding of disability, mental illness remains largely stigmatized and misunderstood. The courts below held, in essence, that an absence due to a suicide attempt constitutes a voluntary absence waiving the constitutional right to be present for a criminal trial. This outcome assumes that suicide attempts are willful acts—an assumption generally contradicted by modern medical science. Amici ask the Court to reverse the trial court's waiver of Ms. Sides' constitutional rights.²

² Amici believe that the Court of Appeals opinion and the order of the trial court, should be reversed based on the courts' errors with regard to the determination of

I. Suicidal Ideation and Suicide Attempt Are Often Manifestations of Mental Illness.

People with mental illness may experience suicidal ideation or attempt suicide as a consequence of their mental illness. Where the facts of a case indicate that mental illness, and not choice, may have been the cause of a defendant's absence from court, a thorough investigation is necessary to determine what effect, if any, the defendant's illness had on the voluntariness of their absence. *See United States v. Camacho*, 955 F.2d 950, 954 (4th Cir. 1992) (internal quotations omitted) (“[T]he right [to be present at trial], however, cannot cursorily, and without inquiry, be deemed by the trial court to have been waived simply because the accused is not present when he should have been.”); *see also State v. Minyard*, 231 N.C. App. 605, 626, 753 S.E.2d. 176, 191 (2014) (“Voluntary waiver of one’s right to be present is a separate inquiry from competency.”). A specific clinical determination regarding Ms. Sides’ suicide attempt was hindered by the trial court’s decision not to pursue a forensic psychiatric analysis or gather sufficient medical records and information.³ Nevertheless, the record on appeal contains several indications that mental illness may well have been a factor in Ms. Sides’ attempt to end her life, perhaps most significantly the fact that she was absent due to being involuntarily committed for psychiatric care because of

voluntariness, and have therefore not addressed the issue of a competency hearing in this Brief.

³ The record indicates that the trial court requested and received only the medical records pertaining to Ms. Sides’ involuntary commitment. (R. at 42–43). These records cover only a few days and did not include records from her previous treatment that could give a clearer picture of Ms. Sides’ mental health history.

that attempt.⁴ (R. at 35–39). The trial court determined, without developing medical evidence, that Ms. Sides’ ingestion of a significant amount of Xanax was a voluntary act. It was error for the trial court to find Ms. Sides’ absence to be voluntary without considering the connection between mental illness and suicide.

Mental illness is not voluntary; it is a disability. *See* 28 C.F.R. §§ 35.108(a)(1)(i), (b)(1)(ii) (identifying mental illness as a protected disability). The medical community has long been in agreement that suicidal ideations, attempts, and deaths can often be manifestations of certain types of mental illness. For example, the current edition of the Diagnostic and Statistical Manual of Mental Disorders (“DSM”), a widely accepted medical reference, lists several mental illnesses as contributing to an increased risk of suicide. AMERICAN PSYCHIATRIC ASSOCIATION, *Diagnostic and Statistical Manual of Mental Disorders* (5th ed. 2013). The DSM lists “recurrent thoughts of death . . . recurrent suicidal ideation . . . or a suicide attempt or specific plan for committing suicide” as one of the nine symptoms of a major depressive episode and states that “bipolar disorder may account for one-quarter of all completed suicides.” *Id.* at 160–161, 131.

⁴ The statute governing involuntary commitment (IVC) provides for the IVC “of an individual who has a mental illness and is either (i) dangerous to self [], or dangerous to others, [] or (ii) in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness.” N.C.G.S. § 122C-261(a). The placement of an individual in an in-patient setting on an IVC order of a magistrate raises at least reasonable grounds to believe that the individual may have a mental illness. *See* N.C.G.S. § 122C-261(b) (requiring a magistrate to determine there are reasonable grounds for the IVC order).

While people without mental illness can experience suicidal ideation, medical literature contains a plethora of support for the assertion that suicidal ideation and suicide attempts are often manifestations of mental illness. As one article states, “[s]uicide is intertwined with mental illness. People who have chronic mood disorders or psychosis are 10 to 20 times more likely to commit suicide than people without those disorders.” Jeffrey W. Swanson et al., *Getting Serious About Reducing Suicide: More “How” and Less “Why”*, 314 J. AM. MED. ASS’N 2229, 2229 (2015) (internal citation omitted). Another study found that “[a]ny classic retrospective and psychological autopsy studies have consistently indicated that most, often more than 90%, of all completed suicides fulfill the criteria for a psychiatric diagnosis. Clinical studies have also demonstrated that patients with mental disorders are at an increased risk of suicide.” Ping Qin & Merete Nordentoft, *Suicide Risk in Relation to Psychiatric Hospitalization*, 62 ARCHIVES GEN. PSYCHIATRY 427, 427 (2005) (internal citations omitted).

This connection between mental illness and suicidal behaviors is borne out in multiple psychiatric studies conducted over decades, many of which “have shown that suicide risk is substantially increased in persons with mental disorders.” Jeffrey W. Swanson et al., *Mental Illness and Reduction of Gun Violence and Suicide: Bringing Epidemiologic Research to Policy*, 25 ANNALS OF EPIDEMIOLOGY 366, 370 (2015). An ongoing review of scientific literature last updated shortly before this filing concluded that “more than 90 percent of patients who attempt suicide have a psychiatric disorder, and 95 percent of patients who successfully commit suicide have a

psychiatric diagnosis.” Jennifer Schreiber & Larry Culpepper, *Suicidal Ideation and Behavior in Adults*, UP TO DATE, <https://www.uptodate.com/contents/suicidal-ideation-and-behavior-in-adults> (last updated Dec. 2019) (internal citations omitted).

The Supreme Court of North Carolina anticipated the connection between suicide and mental illness that was later recognized by the modern medical community. Fifty years ago, the Court considered whether suicide was willful in the context of a workers’ compensation claim. *Petty v. Associated Transport, Inc.*, 276 N.C. 417, 173 S.E.2d 321 (1970). The Court stated that the claimant’s “agitated depression resulting from the accident caused his suicide.” *Id.* at 428, 173 S.E.2d at 330. Justice Susie Sharp, writing for a unanimous Court, articulated the view of the Court this way: “To say, as a matter of law, that one who intentionally takes his own life acts willfully is to ignore the role which pain or despair may play in breaking down a rational, mental process.” *Id.* at 426, 173 S.E.2d at 328 (internal quotations omitted). The Court then examined cases from other jurisdictions where mental illness had led to suicide, and agreed with the determination in those cases that suicide where the individual was “mentally [ill] and deprived of normal judgment” was not willful. *Id.* at 428, 173 S.E.2d at 329. While the Court applied this analysis in a different context, the principle that suicide is not a voluntary act when it is the product of mental illness rather than a rational choice is equally relevant in this case.

The decision below did not take into account whether Ms. Sides’ suicide attempt was the product of mental illness, and was contrary to Justice Sharp’s

admonition in *Petty*.⁵ As discussed in the next section, failure to consider the effects of a defendant's mental illness when determining whether an absence is voluntary also undermines anti-discrimination laws adopted by North Carolina and the United States Congress.

II. The Americans with Disabilities Act and the North Carolina Persons with Disabilities Protection Act Protect Criminal Defendants from Discrimination on the Basis of Mental Illness.

Congress passed the Americans with Disabilities Act ("ADA") by large majorities "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(1). It sought to address the "serious and pervasive social problem" such discrimination causes. 42 U.S.C. § 12101(a)(2). In particular, one of Congress' main concerns was that damaging and inaccurate stereotypes about individuals with disabilities led to their exclusion from many aspects of society. *Tennessee v. Lane*, 541 U.S. 509, 516, 124 S. Ct. 1978, 1984 (2004); see also Elizabeth F. Emens, *The Sympathetic Discriminator: Mental Illness, Hedonic Costs, and the ADA*, 94 GEO. L.J. 399 (2006).

⁵ The record does not suggest that the trial court considered Ms. Sides' suicide attempt to be disingenuous. Successfully engaging in manipulative suicidal behavior by overdosing on pills is no simple feat. In *United States v. Latham*, the First Circuit Court of Appeals reasoned that to do so in order to avoid the trial but not actually die, a defendant must "fine[ly] calibrate[] the dosage so precisely that he would reach a critical medical condition, but would somehow manage to survive." *United States v. Latham*, 874 F.2d 852, 858 (1st Cir. 1989). In doing so, a defendant would understand that he would not avoid court entirely because he would stand trial upon recovery. *Id.* Therefore, there is little potential for a defendant staging a manipulative suicide attempt.

Social science research indicates that mental illness is one of the, if not the, most stigmatized social conditions one can experience. *Said I, 'But You Have No Choice': Why a Lawyer Must Ethically Honor a Client's Decision about Mental Health Treatment Even if it is Not What S/he Would Have Chosen*, Michael L. Perlin & Naomi M. Weinstein, 15 *CARDOZO PUB. L. POL'Y & ETHICS J.* 73, 83 (2016) (internal quotation omitted). Common stereotypes include beliefs that people with mental illnesses are "unreliable, lazy, responsible for their illness or otherwise blameworthy, [and] faking or exaggerating their condition." Emens, *The Sympathetic Discriminator*, 94 *GEO. L.J.* at 416–17; see also *Crazy (Mental Illness Under the ADA)*, Jane Byeff Korn, 36 *U. MICH. J.L. REFORM* 585, 605 (2003).

The ADA protects individuals from discrimination on the basis of mental illness by defining "disability" to include "[a]ny mental or psychological disorder such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disability." 28 C.F.R. §§ 35.108(a)(1)(i), (b)(1)(ii). ADA regulations specify that "[m]ajor depressive disorder" and other mental illnesses "substantially limit[] brain function," and thus constitute disabilities. 28 C.F.R.

§ 35.108(d)(2)(iii)(K). Notably, Congress expressly debated the question of mental illness and decided that those with mental illness should receive the same protections as people with physical and intellectual disabilities. See Keri K. Gould, *And Equal Participation for all... the Americans with Disabilities Act in the Courtroom*, 8 *J.L. & HEALTH* 123, 130–31 (1993–94); Lorraine Schmall, *One Step Closer to Mental Health Parity*, 9 *NEV. L.J.* 646, 659–60 (2009) ("The definition of 'disability' shall be construed

broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA.”).

The ADA provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132.⁶ Regarding discrimination in the public sphere, the U.S. Supreme Court observed that the many areas of discriminatory treatment by state agencies “demonstrate a pattern of unconstitutional treatment in the administration of justice.” *Lane*, 541 U.S. at 524–25, 124 S. Ct. at 1989–1990.

In *Tennessee v. Lane*, the U.S. Supreme Court explained the importance of the ADA’s application to state courts. In *Lane*, the respondent used a wheelchair for mobility and could not answer criminal charges against him because the courthouse did not have an elevator that would allow him to reach his third-floor courtroom. *Id.* The Court held that in passing the ADA, Congress had effectively abrogated state sovereign immunity because it sought “to enforce a variety of . . . basic constitutional guarantees,” including the rights afforded to disabled criminal defendants by the Fourteenth Amendment Due Process and Sixth Amendment Confrontation Clauses. *Id.* In particular, the Court found that failing to accommodate the legitimate needs

⁶ The North Carolina General Assembly has adopted, and periodically amended, a statute that parallels the provisions of the ADA, including the prohibition on discrimination by public entities, including courts. N.C.G.S. § 168A-7(a).

of individuals with disabilities violates “the right to be present at all stages of the trial where [a criminal defendant’s] absence might frustrate the fairness of the proceedings.” *Id.* at 523, 124 S. Ct. at 1988 (quoting *Faretta v. California*, 422 U.S. 806, 819, n.15, 95 S. Ct. 2525, 2533 n.15 (1975)), and the right to a “meaningful opportunity to be heard.” *Id.* (quoting *Boddie v. Connecticut*, 401 U.S. 371, 379, 91 S. Ct. 780, 787 (1971)). Thus, the Court recognized that under the ADA, states must ensure that individuals with disabilities have access to courts unless doing so would fundamentally alter the nature of the court’s proceedings:

This duty to accommodate is perfectly consistent with the well-established due process principle that, within the limits of practicability, a State must afford to all individuals a meaningful opportunity to be heard in its courts.

Id. at 532, 124 S. Ct. at 1994 (internal quotation marks and citation omitted). The Court emphasized that “ordinary considerations of cost and convenience alone cannot justify a State’s failure to provide individuals with a meaningful right of access to the courts.” *Id.* at 533, 124 S. Ct. at 1994.

The Supreme Court held in *Lane* that Congress was empowered to require that the states ensure access to the courts because access to the courts is fundamental to due process. In the context of criminal defendants whose lives and liberty are in jeopardy, those fundamental due process rights – including the right to be present –

are paramount. Denying a defendant's right to be present because of the manifestation of a disability would be contrary to the ADA and state disability law.⁷

III. Reliance on the Opinions of Medical Professionals is Warranted When Determining the Clinical Cause of a Suicide Attempt or Other Medical or Mental Health Crisis.

When considering issues involving mental illness, judges regularly rely on the judgment of medical professionals when making decisions that affect mental health treatment. *See Parham v. J.R.*, 442 U.S. 584, 609, 99 S. Ct. 2493, 2507 (1979) (internal quotations omitted) (“Here, the questions are essentially medical in character . . . [w]hile facts are plainly necessary for a proper resolution of those questions, they are only a first step in the process . . . the determination of whether a person is mentally ill turns on the *meaning* of the facts which must be interpreted by expert psychiatrists and psychologists . . . we do not accept the notion that the shortcomings of specialists can always be avoided by shifting the decision from a trained specialist using the traditional tools of medical science to an untrained judge.”); *Washington v. Harper*, 494 U.S. 210, 231, 110 S. Ct. 1028, 1042 (1990) (regarding the involuntary administrations of psychotropic medication to prisoners: “[A]n inmate's interests are adequately protected, and perhaps better served, by

⁷ Trial courts generally have inherent authority to manage their courtrooms. However, a trial judge's inherent authority to administer justice in their courtroom does not empower the trial court to deny due process or override legislative enactments. *See In re Burton*, 257 N.C. 534, 543-44, 126 S.E.2d 581, 587-588 (1962) (holding that a trial judge's authority to disbar an attorney is limited by due process); *State v. Gravette*, 327 N.C. 114, 124-125, 393 S.E.2d. 865, 871-872 (1990) (overruling trial court's imposition of probation supervision not permitted by statute).

allowing the decision to medicate to be made by medical professionals rather than a judge.”).

In other contexts, such as worker's compensation and employment, North Carolina Courts have, relying on medical professionals, determined that what might otherwise be considered voluntary actions may not have been willful in a legal sense. See *Bulloch v. N.C. Dep't of Crime Control & Pub. Safety*, 223 N.C. App. 1, 7, 732 S.E.2d 373, 378 (2012) (concluding there was substantial evidence that “Bulloch’s behavior was not intentional, but rather was a result of his medical condition and the unexpected effects of his prescribed treatment.”); *Petty*, 276 N.C. at 417, 173 S.E. 2d at 321 (1970) (holding defendant’s suicide was not a willful action).

Ms. Sides, after medical evaluation, was under a court order of involuntary commitment, requiring that she submit to in-patient psychiatric treatment. (R. at 35–41). Prior to her commitment, she engaged in an act that is often a manifestation of mental illness; she attempted suicide. These circumstances suggest reasonable grounds to indicate that her disability may have caused her absence from court, and should have triggered the court to investigate further regarding the effect of Ms. Sides’ mental health on the voluntariness of her actions. For this reason, Amici ask that the Court reverse the Court of Appeals.

CONCLUSION

Writing in 1992 about people with intellectual and developmental disabilities, former Chief Justice James Exum Jr. wrote that cases involving questions of mental

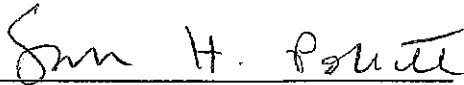
health often hinge on the judiciary's knowledge of mental illness. JAMES G. EXUM, JR., *Points of View: The Judiciary*, in *THE CRIMINAL JUSTICE SYSTEM AND MENTAL RETARDATION: DEFENDANTS AND VICTIMS 1-4* (Ronald W. Conley et al., eds., 1992) (noting that from the perspective of the judiciary, there is a great need to know about the difficulties people with a mental health disability have in our judicial system). Justice Exum's observation suggests that legal questions may be answered differently as our understanding of mental health evolves, echoing the principle that "[a] frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty". N.C. CONST. art. I, § 35.

Medical consensus developed over the past several decades has confirmed what Justice Sharp wrote in 1970: deciding that suicide is a willful or voluntary act without adequate investigation into a defendant's mental health "is to ignore the role which pain or despair may play in breaking down a rational, mental process." *Petty*, 276 N.C. at 426, 173 S.E.2d. at 328. The fundamental principles of fairness in criminal justice proceedings require that North Carolinians not be denied just trials based on the manifestations of their disability.

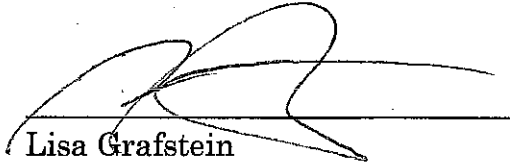
Amici ask that the Court reverse the Court of Appeals decision and remand to the trial court for a new trial.

Respectfully submitted, this 17th day of January, 2020.

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CERTIFICATE OF SERVICE

Counsel hereby certifies that the foregoing Motion For Leave To File Amicus Curiae Brief together with the proposed Brief of Amici Curiae were served on Counsel for Defendant and The State by U.S. Mail, proper postage prepaid addressed as follows:

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This the 17th day of January, 2020.

A handwritten signature in black ink, appearing to read 'Luke Woollard', written over a horizontal line.

Luke Woollard, Attorney

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