

She Went to Jail for a Drug Relapse. Tough Love or Too Harsh?

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ABSTRACT (ENGLISH)

A Massachusetts case makes a novel challenge to probation: Is it unfair to require an addicted offender to remain drug-free or face prison?

FULL TEXT

STOW, Mass. —As soon as Julie Eldred was granted probation for stealing jewelry to buy drugs, she got busy fulfilling the judge's conditions. She began an intensive all-day outpatient treatment program. She even went an extra step and started daily doses of Suboxone, a medication that can quell opiate cravings.

Then she relapsed and snorted her drug of choice —fentanyl.

To stop from plunging into free fall, she asked her doctor for a stronger dose of Suboxone. She stayed clean the next day. And the next.

But the following morning, 11 days after her probation began, she had her first drug screen and tested positive. Traces of fentanyl had lingered in her system. Within hours, she was shackled, strip-searched and incarcerated.

Should an addict's relapse be punished with a criminal sanction? Ms. Eldred has put that question before the Massachusetts Supreme Judicial Court, in a case that may have widespread ripples, as hundreds of thousands of addicted people tumble into the criminal justice system. Remaining drug-free is an almost universal requirement of probation. Violating it can bring sanctions ranging from a warning to, frequently, jail.

The judge ordered Ms. Eldred to a medium-security prison, until her lawyer could find her residential treatment.

During the 10 days she spent there, she did not receive any drug counseling, much less Suboxone.

In *Commonwealth v. Julie Eldred*, the justices, presiding over the state's highest court, are wrestling with whether this condition of her probation amounts to cruel and unusual punishment for an offender with a substance use disorder. In reaching a decision, expected imminently, the justices must weigh competing scientific studies. Is addiction a brain disease that interferes with one's capacity to abstain? Or a condition, rather than a disease, that is responsive to penalties and rewards?

Law enforcement officials argue that the threat of jail protects not only offenders but society from potentially more drug-related crimes. Yet numerous addiction specialists say that the criminal justice system is the most blunt and clumsy of instruments for addressing a public health disaster.

The Eldred case is philosophically tricky, said Eric E. Sterling, executive director of the Criminal Justice Policy Foundation. "We're punishing someone who has a disease. Yet we don't want to create an exemption from punishment for people who commit crimes when they are addicts."

That the challenge is even before a court indicates how science has changed the perception of addiction from the zero-tolerance crack years. Some observers say the courts may be taking the issue more seriously because contemporary offenders tend to be, like Ms. Eldred, white, while crack defendants were overwhelmingly black.

Having misused drugs since she was 15 years old, Ms. Eldred argues that she was incapable of stopping abruptly. A brief signed by addiction medicine experts and policymakers supports her.

In it, they state that addiction is "a primary, chronic disease of brain reward, motivation, memory and related circuitry." Someone severely afflicted needs the drugs not for a pleasurable high, but to maintain a new normal and

stave off withdrawal. The brain becomes so compromised, they say, that relapse is not only involuntary but to be expected on the stop-start journey to recovery.

Relapse, therefore, is not an indication that an addicted person is willfully defying a court's order, said Lisa Newman-Polk, Ms. Eldred's lawyer, a former social worker, but "a symptom of the disease and a signal that the addiction is active."

Instead of jailing Ms. Eldred, a judge could give treatment more time or alter it, she said during oral argument in October.

In a brief supporting the prosecution, psychiatrists, psychologists and legal scholars assert that the brain-disease model is contested. Changes in brain structure from drugs do not necessarily translate into an inability to resist them, they said. With carrot-stick prompts, many addicted people can choose to abstain.

And, prosecutors said, two such prompts include an expunged record for completing probation or, for relapse, jail. A brief submitted by the National Association of Drug Court Professionals on behalf of 3,400 drug courts noted that the success of these programs depends on a judge being able to apply graduated sanctions, to propel a defendant through treatment.

"There's a lot of data showing individual differences in resisting relapse but that people figure out ways to deal with their cravings all the time," said Gene M. Heyman, a lead author on an amicus brief who lectures about addiction at Boston College and Harvard. "Think of the idioms that have emerged: 'kicking the habit' and 'going cold turkey.' These refer to voluntarily quitting on your own."

Dr. Heyman, an experimental psychologist, said addiction is a severe problem, but stopped short of calling it a disease that relies on a medical model for intervention. Behavioral and social norms can greatly influence addicts, "but embarrassment doesn't cure cancer," he said.

"Jail won't solve the problem," he added. But temporarily, "it might stop some people from continuing to use or even overdose."

When that point is put to Ms. Eldred, 30, a small, fine-boned woman with blond hair rinsed pink, who is a year sober, she will tell you that jail is no haven from drugs. During her stints in prison, drugs were often available, she said. One inmate overdosed.

Ms. Eldred had risk factors for severe opioid use disorder that also make recovery protracted: Possible genetic predisposition. Prenatal exposure. Other mental health disorders.

She was adopted as a newborn. Her birth mother used cocaine. She has A.D.H.D. At school in Acton, a Boston suburb, Ms. Eldred channeled her energy into cheerleading, dancing and horseback riding. But opiates, swiped from a friend's parents' medicine cabinet, quelled her restlessness and anxiety in ways that her A.D.H.D. medications did not.

After snorting Vicodin for the first time, she thought: "Oh my God. I love this."

By the time she was a high school junior, she was trading Adderall for Vicodin. Then Percodan 5s. Then Perc 30s.

"I hid it well," she said. "I didn't nod out in public. Except I don't remember high school graduation."

Her new boyfriend was a dealer.

She went through her first detox at 23: by then she was snorting up to 10 Perc 30s a day. She flipped a car. Finally she told her parents, who were stunned but scrambled to find her rehab.

Opiates dominate the story of her next seven years, spent either in full-blown addiction—eventually snorting heroin, and then fentanyl—or working fiercely to get sober. She pinballed among detox, rehab, halfway houses and, briefly, jail.

During one sober stretch that lasted just over two years, she volunteered at barns and dog shelters, and added a certificate in animal behavior to her associate's degree.

She had a fiancé. She was just fine. So she began dialing back on meetings.

Then she had a bad day. And ran into an old acquaintance.

Within six months, her heroin and fentanyl habit grabbed hold with its former fervor.

"It was all about my next fix and not getting sick," Ms. Eldred said. She was maintaining, snorting several times a

day, desperate to avoid withdrawal. She had been through it before, the sweats, shakes, aches, stomach cramps. In August 2016, she stole two necklaces and a bracelet to pawn for drug money. When the judge gave her a year's probation for larceny, facing up to a 30-month sentence for violating conditions, she thought she could remain drug-free. She even tried Suboxone.

"But I still felt sick," she said.

So she used. When she reported her relapse to the doctor, he upped her Suboxone dose.

Ms. Newman-Polk happened to catch Ms. Eldred's probation violation case. The judge said that Ms. Eldred could be released only after the lawyer found her residential treatment.

Ms. Eldred went through withdrawal in prison. Ten days later, she entered a program where she remained for nearly eight months. Only now, a year later, she admitted that even in the first months there, she relapsed. Secretly, she visited her doctor to restart Suboxone.

Her probation ended last August. The case is over. She looks happy, gray-blue eyes clear, the new apartment, which she and her fiancé share with a dog and cat, both rescues, spotless.

Didn't getting a probation violation and going to jail lead her to this good place?

Ms. Newman-Polk, who had been preparing the legal challenge before meeting Ms. Eldred, disagreed.

"Dehumanizing Julie with jail didn't get her better," she said. "She's in recovery because of sustained treatment with medication and family support, which is exactly what the court interrupted by jailing her."

Prosecutors have pointed to Hawaii's Opportunity Probation with Enforcement (HOPE) as a model. Probationers are told they will be tested randomly and frequently. Incarceration, though brief, will be swift and certain. The program's low rate of recidivism for crime and drug use has drawn national acclaim.

But recent studies show that replication efforts failed. They reduced neither rates of drug use nor crime.

Probation, writes Fiona Doherty, a clinical professor at Yale Law School, is "a hidden body of law" that needs scrutiny because judges and probation officers have wide latitude to define a defendant's "good behavior."

The Eldred case, which challenges that power, is, ironically, a continuation of the origins story for probation. In 1841, John Augustus, a teetotaling Boston bootmaker, described as the father of modern probation, posted bond for "a common drunkard." By his death, he had supervised nearly 2,000 people, many arrested for intoxication, their records expunged in exchange for avowed sobriety.

Ms. Eldred's lawyers rely on a 1962 United States Supreme Court case, *Robinson v. California*, which struck down a statute making it a crime for a person "to be addicted to the use of narcotics" —noting that while selling or possessing illegal drugs was against the law, the state could not punish people solely for the status of their illness. But during the Eldred argument, the justices in Massachusetts noted that many offenders commit crimes to sustain their addictions. Shouldn't judges order an addicted defendant to remain substance-free to prevent criminal behavior?

Indeed, prosecutors wrote, if the justices found that Ms. Eldred "did not have free will with regard to her drug use, this 'compulsion' may serve as an excuse to the drug-related larceny itself."

Kelly Mitchell of the University of Minnesota Law School's Robina Institute for Criminal Law and Criminal Justice, suggested a middle-ground solution. A judge could order the offender to be evaluated for substance use disorder and to follow treatment recommendations, she said. A violation, she said, would be for "failing to get the evaluation and to attend treatment, rather than failing to remain drug-free."

For Julie Eldred, the requirement to stay drug-free was a disincentive for recovery. "Knowing that a relapse leads to a probation violation made it harder for me to talk about my struggles, for fear of being locked up," she said.

Credit: Jan Hoffman

DETAILS

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