SUPREME COURT OF THE UNITED STATES

No. 00–957

KANSAS, PETITIONER *v.* MICHAEL T. CRANE

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF KANSAS

[January 22, 2002]

JUSTICE BREYER delivered the opinion of the Court.

This case concerns the constitutional requirements substantively limiting the civil commitment of a dangerous sexual offender—a matter that this Court considered in *Kansas* v. *Hendricks,* 521 U. S. 346 (1997). The State of Kansas argues that the Kansas Supreme Court has interpreted our decision in *Hendricks* in an overly restrictive manner. We agree and vacate the Kansas court's judgment.

I

In *Hendricks,* this Court upheld the Kansas Sexually Violent Predator Act, Kan. Stat. Ann. §59–29a01 *et seq.* (1994), against constitutional challenge. 521 U. S., at 371. In doing so, the Court characterized the confinement at issue as civil, not criminal, confinement. *Id.,* at 369. And it held that the statutory criterion for confinement embodied in the statute's words "mental abnormality or personality disorder" satisfied "'substantive' due process requirements." *Id.,* at 356, 360.

In reaching its conclusion, the Court's opinion pointed out that "States have in certain narrow circumstances provided for the forcible civil detainment of people who are unable to control their behavior and who thereby pose a

danger to the public health and safety." *Id.,* at 357. It said that "we have consistently upheld such involuntary commitment statutes" when (1) "the confinement takes place pursuant to proper procedures and evidentiary standards," (2) there is a finding of "dangerousness either to one's self or to others," and (3) proof of dangerousness is "coupled . . . with the proof of some additional factor, such as a 'mental illness' or 'mental abnormality.'" *Id.,* at 357–358. It noted that the Kansas "Act unambiguously requires a finding of dangerousness either to one's self or to others," *id.,* at 357, and then "links that finding to the existence of a 'mental abnormality' or 'personality disorder' that makes it difficult, if not impossible, for the person to control his dangerous behavior," *id.,* at 358 (citing Kan. Stat. Ann. §59–29a02(b) (1994)). And the Court ultimately determined that the statute's "requirement of a 'mental abnormality' or 'personality disorder' is consistent with the requirements of . . . other statutes that we have upheld in that it narrows the class of persons eligible for confinement to those who are unable to control their dangerousness." 521 U. S., at 358.

The Court went on to respond to Hendricks' claim that earlier cases had required a finding, not of "mental abnormality" or "personality disorder," but of "mental illness." *Id.,* at 358–359. In doing so, the Court pointed out that we "have traditionally left to legislators the task of defining [such] terms." *Id.,* at 359. It then held that, to "the extent that the civil commitment statutes we have considered set forth criteria relating to an individual's inability to control his dangerousness, the Kansas Act sets forth comparable criteria." *Id.,* at 360. It added that Hendricks' own condition "doubtless satisfies those criteria," for (1) he suffers from pedophilia, (2) "the psychiatric profession itself classifies" that condition "as a serious mental disorder," and (3) Hendricks conceded that he cannot "'control the urge'" to molest children. And it

concluded that this "admitted lack of volitional control, coupled with a prediction of future dangerousness, adequately distinguishes Hendricks from other dangerous persons who are perhaps more properly dealt with exclusively through criminal proceedings." *Ibid.*

II

In the present case the State of Kansas asks us to review the Kansas Supreme Court's application of *Hendricks*. The State here seeks the civil commitment of Michael Crane, a previously convicted sexual offender who, according to at least one of the State's psychiatric witnesses, suffers from both exhibitionism and antisocial personality disorder. *In re Crane*, 269 Kan. 578, 580–581, 7 P. 3d 285, 287 (2000); cf. also American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders 569 (rev. 4th ed. 2000) (DSM–IV) (detailing exhibitionism), 701–706 (detailing antisocial personality disorder). After a jury trial, the Kansas District Court ordered Crane's civil commitment. 269 Kan., at 579–584, 7 P. 3d, at 286–288. But the Kansas Supreme Court reversed. *Id.,* at 586, 7 P. 3d, at 290. In that court's view, the Federal Constitution as interpreted in *Hendricks* insists upon "a finding that the defendant cannot control his dangerous behavior"—even if (as provided by Kansas law) problems of "emotional capacity" and not "volitional capacity" prove the "source of bad behavior" warranting commitment. *Ibid.,* see also Kan. Stat. Ann. §59–29a02(b) (2000 Cum. Supp.) (defining "[m]ental abnormality" as a condition that affects an individual's emotional *or* volitional capacity). And the trial court had made no such finding.

Kansas now argues that the Kansas Supreme Court wrongly read *Hendricks* as requiring the State *always* to prove that a dangerous individual is *completely* unable to control his behavior. That reading, says Kansas, is far too rigid.

III

We agree with Kansas insofar as it argues that *Hendricks* set forth no requirement of *total* or *complete* lack of control. *Hendricks* referred to the Kansas Act as requiring a "mental abnormality" or "personality disorder" that makes it "*difficult*, if not impossible, for the [dangerous] person to control his dangerous behavior." 521 U. S., at 358 (emphasis added). The word "difficult" indicates that the lack of control to which this Court referred was not absolute. Indeed, as different *amici* on opposite sides of this case agree, an absolutist approach is unworkable. Brief for Association for the Treatment of Sexual Abusers as *Amicus Curiae* 3; cf. Brief for American Psychiatric Association et al. as *Amici Curiae* 10; cf. also American Psychiatric Association, Statement on the Insanity Defense 11 (1982), reprinted in G. Melton, J. Petrila, N. Poythress, & C. Slobogin, Psychological Evaluations for the Courts 200 (2d ed. 1997) ("'The line between an irresistible impulse and an impulse not resisted is probably no sharper than that between twilight and dusk'"). Moreover, most severely ill people—even those commonly termed "psychopaths"—retain some ability to control their behavior. See Morse, Culpability and Control, 142 U. Pa. L. Rev. 1587, 1634–1635 (1994); cf. Winick, Sex Offender Law in the 1990s: A Therapeutic Jurisprudence Analysis, Hence, 4 Psychol. Pub. Pol'y & L. 505, 520–525 (1998). Insistence upon absolute lack of control would risk barring the civil commitment of highly dangerous persons suffering severe mental abnormalities.

We do not agree with the State, however, insofar as it seeks to claim that the Constitution permits commitment of the type of dangerous sexual offender considered in *Hendricks* without *any* lack-of-control determination. See Brief for Petitioner 17; Tr. of Oral Arg. 22, 30–31. *Hendricks* underscored the constitutional importance of distinguishing a dangerous sexual offender subject to civil

commitment "from other dangerous persons who are perhaps more properly dealt with exclusively through criminal proceedings." 521 U. S., at 360. That distinction is necessary lest "civil commitment" become a "mechanism for retribution or general deterrence"—functions properly those of criminal law, not civil commitment. *Id.,* at 372–373 (KENNEDY, J., concurring); cf. also Moran, The Epidemiology of Antisocial Personality Disorder, 34 Social Psychiatry & Psychiatric Epidemiology 231, 234 (1999) (noting that 40%–60% of the male prison population is diagnosable with Antisocial Personality Disorder). The presence of what the "psychiatric profession itself classifie[d] . . . as a serious mental disorder" helped to make that distinction in *Hendricks*. And a critical distinguishing feature of that "serious . . . disorder" there consisted of a special and serious lack of ability to control behavior.

In recognizing that fact, we did not give to the phrase "lack of control" a particularly narrow or technical meaning. And we recognize that in cases where lack of control is at issue, "inability to control behavior" will not be demonstrable with mathematical precision. It is enough to say that there must be proof of serious difficulty in controlling behavior. And this, when viewed in light of such features of the case as the nature of the psychiatric diagnosis, and the severity of the mental abnormality itself, must be sufficient to distinguish the dangerous sexual offender whose serious mental illness, abnormality, or disorder subjects him to civil commitment from the dangerous but typical recidivist convicted in an ordinary criminal case. 521 U. S., at 357–358; see also *Foucha* v. *Louisiana,* 504 U. S. 71, 82–83 (1992) (rejecting an approach to civil commitment that would permit the indefinite confinement "of any convicted criminal" after completion of a prison term).

We recognize that *Hendricks* as so read provides a less precise constitutional standard than would those more

definite rules for which the parties have argued. But the Constitution's safeguards of human liberty in the area of mental illness and the law are not always best enforced through precise bright-line rules. For one thing, the States retain considerable leeway in defining the mental abnormalities and personality disorders that make an individual eligible for commitment. *Hendricks*, 521 U. S., at 359; *id.*, at 374–375 (BREYER, J., dissenting). For another, the science of psychiatry, which informs but does not control ultimate legal determinations, is an ever-advancing science, whose distinctions do not seek precisely to mirror those of the law. See *id.,* at 359. See also, *e.g., Ake* v. *Oklahoma,* 470 U. S. 68, 81 (1985) (psychiatry not "an exact science"); DSM–IV xxx ("concept of mental disorder . . . lacks a consistent operational definition"); *id.*, at xxxii–xxxiii (noting the "imperfect fit between the questions of ultimate concern to the law and the information contained in [the DSM's] clinical diagnosis"). Consequently, we have sought to provide constitutional guidance in this area by proceeding deliberately and contextually, elaborating generally stated constitutional standards and objectives as specific circumstances require. *Hendricks* embodied that approach.

IV

The State also questions how often a volitional problem lies at the heart of a dangerous sexual offender's serious mental abnormality or disorder. It points out that the Kansas Supreme Court characterized its state statute as permitting commitment of dangerous sexual offenders who (1) suffered from a mental abnormality properly characterized by an "emotional" impairment and (2) suffered no "volitional" impairment. 269 Kan., at 583, 7 P. 3d, at 289. It adds that, in the Kansas court's view, *Hendricks* absolutely forbids the commitment of any such person. 269 Kan., at 585–586, 7 P. 3d, at 290. And the State

argues that it was wrong to read *Hendricks* in this way. Brief for Petitioner 11; Tr. of Oral Arg. 5.

We agree that *Hendricks* limited its discussion to volitional disabilities. And that fact is not surprising. The case involved an individual suffering from pedophilia—a mental abnormality that critically involves what a lay person might describe as a lack of control. DSM–IV 571–572 (listing as a diagnostic criterion for pedophilia that an individual have acted on, or been affected by, "sexual urges" toward children). Hendricks himself stated that he could not "'control the urge'" to molest children. 521 U. S., at 360. In addition, our cases suggest that civil commitment of dangerous sexual offenders will normally involve individuals who find it particularly difficult to control their behavior—in the general sense described above. Cf. *Seling* v. *Young,* 531 U. S. 250, 256 (2001); cf. also Abel & Rouleau, Male Sex Offenders, in Handbook of Outpatient Treatment of Adults: Nonpsychotic Mental Disorders 271 (M. Thase, B. Edelstein, & M. Hersen eds. 1990) (sex offenders' "compulsive, repetitive, driven behavior . . . appears to fit the criteria of an emotional or psychiatric illness"). And it is often appropriate to say of such individuals, in ordinary English, that they are "unable to control their dangerousness." *Hendricks*, *supra,* at 358.

Regardless, *Hendricks* must be read in context. The Court did not draw a clear distinction between the purely "emotional" sexually related mental abnormality and the "volitional." Here, as in other areas of psychiatry, there may be "considerable overlap between a . . . defective understanding or appreciation and . . . [an] ability to control . . . behavior." American Psychiatric Association Statement on the Insanity Defense, 140 Am. J. Psychiatry 681, 685 (1983) (discussing "psychotic" individuals). Nor, when considering civil commitment, have we ordinarily distinguished for constitutional purposes among volitional, emotional, and cognitive impairments. See, *e.g.*, *Jones* v.

United States, 463 U. S. 354 (1983); *Addington* v. *Texas,* 441 U. S. 418 (1979). The Court in *Hendricks* had no occasion to consider whether confinement based solely on "emotional" abnormality would be constitutional, and we likewise have no occasion to do so in the present case.

* * *

For these reasons, the judgment of the Kansas Supreme Court is vacated, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.