

***Banks v. Ludeman (2010)***

**Nature:** Petition for discharge from MI&D commitment

**Facts and Procedure:** On January 31, 2005, Kevin A. Banks, Jr., hit an acquaintance in the back of the head with a shovel following an argument about drugs and drug money. The victim was “rendered a quadriplegic” as a result of the assault and Banks was charged with Assault in the First Degree. Banks underwent two Rule 20 evaluations, each of which diagnosed him with a psychotic disorder. Banks was found not guilty by reason of mental illness on February 13, 2006, and Ramsey County commenced with MI&D commitment proceedings. Three MI&D evaluations resulted in diagnoses of psychotic disorders although Banks was not demonstrating psychotic symptoms at the time of any of the evaluations (and had even been living in the community without complication for more than one year prior to his initial MI&D evaluation as he was awaiting bed space at MSH). Banks’ MI&D commitment was finalized on September 5, 2006. In September 2007, MI&D staff became concerned that Banks was cheating his psychiatric medications and he ultimately admitted to not having taken his medications for “many, many months,” although he had been psychiatrically stable throughout his hospitalization. He further reported that he lied about any psychotic symptoms causing him to commit the overt act, adding that he lied about such symptoms previously in order to avoid incarceration and admitted to hitting the victim because the victim owed Banks money. MSH staff began to question the legitimacy of Bank’s psychotic disorder diagnoses and discontinued his medications. Banks subsequently petitioned the Special Review Board (SRB) for a discharge from his commitment and participated in a risk assessment in December 2008. The risk assessment report noted that Banks was free of any psychiatric symptoms throughout his hospitalization and the SRB report noted diagnoses of only Cannabis Abuse and Antisocial Personality Disorder. The SRB and the Commissioner of DHS denied Banks’ petition in February 2009 and he subsequently appealed to the Judicial Appeal Panel. Banks participated in another risk assessment in July 2009 at which time he was diagnosed solely with Antisocial Personality Disorder.

**Issue:** Should Banks be discharged from his MI&D commitment?

**Holding:** Yes (the order of the Commissioner of DHS was reversed)

**Rationale:** In addressing the criteria for discharge from an MI&D commitment, the JAP concluded that Banks was capable of making an acceptable adjustment to open society and was no longer in need of inpatient treatment and supervision. They concluded that Banks remained a danger to the public, but that his dangerousness stemmed from his personality disorder diagnosis, history of substance abuse, and other risk factors detailed in the medical record, and noted that “[e]ach of these factors is unrelated to mental illness.” They cited *Lidberg v. Steffan* (1994), which stated that a person who is MI&D may be confined to a mental institution without violating due process until such time as that person is no longer mentally ill or is no longer a danger to himself, as well as *Reome v. Levine* (1988), which stated that due process demands that a patient is released when he or she no longer requires treatment or is no longer dangerous to society.

**Implications:** A patient must be discharged from a MI&D commitment if his or her dangerousness to society does not stem from a mental illness and/or he or she is no longer mentally ill or requires inpatient treatment.