SUPREME COURT OF THE UNITED STATES

No. 90–5844

TERRY FOUCHA, PETITIONER *v.* LOUISIANA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

[May 18, 1992]

JUSTICE WHITE delivered the opinion of the Court, except as to Part III.

When a defendant in a criminal case pending in Louisiana is found not guilty by reason of insanity, he is committed to a psychiatric hospital unless he proves that he is not dangerous. This is so whether or not he is then insane. After commitment, if the acquittee or the superintendent begins release proceedings, a review panel at the hospital makes a written report on the patient's mental condition and whether he can be released without danger to himself or others. If release is recommended, the court must hold a hearing to determine dangerousness; the acquittee has the burden of proving that he is not dangerous. If found to be dangerous, the acquittee may be returned to the mental institution whether or not he is then mentally ill. Petitioner contends that this scheme denies him due process and equal protection because it allows a person acquitted by reason of insanity to be committed to a mental institution until he is able to demonstrate that he is not dangerous to himself and others, even though he does not suffer from any mental illness.

Petitioner Terry Foucha was charged by Louisiana authorities with aggravated burglary and illegal discharge of a firearm. Two medical doctors were appointed to conduct a pretrial examination of Foucha. The doctors initially reported, and the trial

court initially found, that Foucha lacked mental capacity to proceed, App. 8–9, but four months later the trial court found Foucha competent to stand trial. *Id.,* at 4–5. The doctors reported that Foucha was unable to distinguish right from wrong and was insane at the time of the offense.[1] On October 12, 1984, the trial court ruled that Foucha was not guilty by reason of insanity, finding that he ``is unable to appreciate the usual, natural and probable consequences of his acts; that he is unable to distinguish right from wrong; that he is a menace to himself and others; and that he was insane at the time of the commission of the above crimes and that he is presently insane." *Id.,* at 6. He was committed to the East Feliciana Forensic Facility until such time as doctors recommend that he be released, and until further order of the court. In 1988, the superintendent of Feliciana recommended that Foucha be discharged or released. A three-member panel was convened at the institution to determine Foucha's current condition and whether he could be released or placed on probation without being a danger to others or himself. On March 21, 1988, the panel reported that there had been no evidence of mental illness since admission and recommended that Foucha be conditionally discharged.[2] The trial judge

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[1]Louisiana law provides: ``If the circumstances indicate that because of a mental disease or mental defect the offender was incapable of distinguishing between right and wrong with reference to the conduct in question, the offender shall be exempt from criminal responsibility.'' La. Rev. Stat. Ann. §14:14 (West 1986). JUSTICE KENNEDY disregards the fact that the State makes no claim that Foucha was criminally responsible or that it is entitled to punish Foucha as a criminal.

[2]The panel unanimously recommended that petitioner be conditionally discharged with recommendations that he (1) be placed on probation; (2) remain free from intoxicating and mind-altering substances; (3)

appointed a two-member sanity commission made up of the same two doctors who had conducted the pretrial examination. Their written report stated that Foucha "is presently in remission from mental illness [but] [w]e cannot certify that he would not constitute a menace to himself or others if released." *Id.,* at 12. One of the doctors testified at a hearing that upon commitment Foucha probably suffered from a drug induced psychosis but that he had recovered from that temporary condition; that he evidenced no signs of psychosis or neurosis and was in "good shape" mentally; that he has, however, an antisocial personality, a condition that is not a mental disease and that is untreatable. The doctor also testified that Foucha had been involved in several altercations at Feliciana and that he, the doctor, would not "feel comfortable in certifying that [Foucha] would not be a danger to himself or to other people." *Id.,* at 18.

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attend a Substance Abuse clinic on a regular basis; (4) submit to regular and random urine drug screening; and (5) be actively employed or seeking employment. (App. 10–11)

Although the panel recited that it was charged with determining dangerousness, its report did not expressly make a finding in that regard.

After it was stipulated that the other doctor, if he were present, would give essentially the same testimony, the court ruled that Foucha was dangerous to himself and others and ordered him returned to the mental institution. The Court of Appeals refused supervisory writs, and the State Supreme Court affirmed, holding that Foucha had not carried the burden placed upon him by statute to prove that he was not dangerous, that our decision in *Jones* v. *United States*, 463 U. S. 354 (1983), did not require Foucha's release, and that neither the Due Process Clause nor the Equal Protection Clause was violated by the statutory provision permitting confinement of an insanity acquittee based on dangerousness alone.

Because the case presents an important issue and was decided by the court below in a manner arguably at odds with prior decisions of this Court, we granted certiorari. 499 U. S. ___ (1991).

Addington v. *Texas*, 441 U.S. 418 (1979), held that to commit an individual to a mental institution in a civil proceeding, the State is required by the Due Process Clause to prove by clear and convincing evidence the two statutory preconditions to commitment: that the person sought to be committed is mentally ill and that he requires hospitalization for his own welfare and protection of others. Proof beyond reasonable doubt was not required, but proof by preponderance of the evidence fell short of satisfying due process.[3]

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[3]JUSTICE THOMAS in dissent complains that Foucha should not be released based on psychiatric opinion that he is not mentally ill because such opinion is not sufficiently precise—because psychiatry is not an exact science and psychiatrists widely disagree on what constitutes a mental illness. That may be true, but such opinion is reliable enough to permit the courts to base civil commitments on clear and

When a person charged with having committed a crime is found not guilty by reason of insanity, however, a State may commit that person without satisfying the *Addington* burden with respect to mental illness and dangerousness. *Jones* v. *United States, supra*. Such a verdict, we observed in *Jones*, "establishes two facts: (i) the defendant committed an act that constitutes a criminal offense, and (ii) he committed the act because of mental illness," *id.,* at 363, an illness that the defendant adequately proved in this context by a preponderance of the evidence. From these two facts, it could be properly inferred that at the time of the verdict, the defendant was still mentally ill and dangerous and hence could be committed.[4]

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convincing medical evidence that a person is mentally ill and dangerous and to base release decisions on qualified testimony that the committee is no longer mentally ill or dangerous. It is also reliable enough for the State not to punish a person who by a preponderance of the evidence is found to have been insane at the time he committed a criminal act, to say nothing of not trying a person who is at the time found incompetent to understand the proceedings. And more to the point, medical predictions of dangerousness seem to be reliable enough for the dissent to permit the State to continue to hold Foucha in a mental institution, even where the psychiatrist would say no more than that he would hesitate to certify that Foucha would not be dangerous to himself or others.

[4]JUSTICE KENNEDY's assertion that we overrule the holding of *Jones* described in the above paragraph is fanciful at best. As that paragraph plainly shows, we do not question and fully accept that insanity acquittees may be initially held without complying with the procedures applicable to civil committees. As is evident from the ensuing paragraph of the text,

We held, however, that "(t)he committed acquittee is entitled to release when he has recovered his sanity or is no longer dangerous," *id.*, at 368; *i. e.* the acquittee may be held as long as he is both mentally ill and dangerous, but no longer. We relied on *O'Connor* v. *Donaldson*, 422 U. S. 563 (1975), which held as a matter of due process that it was unconstitutional for a State to continue to confine a harmless,

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we are also true to the further holding of *Jones* that both JUSTICE THOMAS and JUSTICE KENNEDY reject: that the period of time during which an insanity acquittee may be held in a mental institution is not measured by the length of a sentence that might have been imposed had he been convicted; rather, the acquittee may be held until he is either not mentally ill or not dangerous. Both Justices would permit the indefinite detention of the acquittee, although the State concedes that he is not mentally ill and although the doctors at the mental institution recommend his release, for no reason other than that a psychiatrist hesitates to certify that the acquittee would not be dangerous to himself or others.

JUSTICE KENNEDY asserts that we should not entertain the proposition that a verdict of not guilty by reason of insanity differs from a conviction. *Post,* at 10. *Jones*, however, involved a case where the accused had been ``found, beyond a reasonable doubt, to have committed a criminal act.'' 463 U.S., at 364. We did not find this sufficient to negate any difference between a conviction and an insanity acquittal. Rather, we observed that a person convicted of crime may of course be punished. But ``[d]ifferent considerations underlie commitment of an insanity acquittee. As he was not convicted, he may not be punished.'' *Id.,* at 369.

JUSTICE KENNEDY observes that proof beyond reasonable doubt of the commission of a criminal act permits a State to incarcerate and hold the offender

mentally ill person. Even if the initial commitment was permissible, "it could not constitutionally continue after that basis no longer existed." *Id.*, at 575. In the summary of our holdings in our opinion we stated that "the Constitution permits the Government, on the basis of the insanity judgment, to confine him to a mental institution until such time as he has regained his sanity or is no longer a danger to himself or society." *Jones,* 463 U.S., at 368, 370.[5] The court below was in error in characterizing the above language from *Jones* as merely an interpretation of

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on any reasonable basis. There is no doubt that the States have wide discretion in determining punishment for convicted offenders, but the Eighth Amendment insures that discretion is not unlimited. The Justice cites no authority, but surely would have if it existed, for the proposition that a defendant convicted of a crime and sentenced to a term of years, may nevertheless be held indefinitely because of the likelihood that he will commit other crimes.

[5]JUSTICE THOMAS, dissenting, suggests that there was no issue of the standards for release before us in *Jones*. The issue in that case, however, was whether an insanity acquittee ``must be released because he has been hospitalized for a period longer than he might have served in prison had he been convicted,'' *Jones*, 463 U.S., at 356; and in the course of deciding that issue in the negative, we said that the detainee could be held until he was no longer mentally ill or no longer dangerous, regardless of how long a prison sentence might have been. We noted in footnote 11 that Jones had not sought a release based on nonillness or nondangerousness, but as indicated in the text, we twice announced the outside limits on the detention of insanity acquittees. The Justice would ``wish'' away this aspect of *Jones*, but that case merely reflected the essence of our prior decisions.

the pertinent statutory law in the District of Columbia and as having no constitutional significance. In this case, Louisiana does not contend that Foucha was mentally ill at the time of the trial court's hearing. Thus, the basis for holding Foucha in a psychiatric facility as an insanity acquittee has disappeared, and the State is no longer entitled to hold him on that basis. *O'Connor*, *supra*, at 574–575.

The State, however, seeks to perpetuate Foucha's confinement at Feliciana on the basis of his antisocial personality which, as evidenced by his conduct at the facility, the court found rendered him a danger to himself or others. There are at least three difficulties with this position. First, even if his continued confinement were constitutionally permissible, keeping Foucha against his will in a mental institution is improper absent a determination in civil commitment proceedings of current mental illness and dangerousness. In *Vitek* v. *Jones*, 445 U. S. 480 (1980), we held that a convicted felon serving his sentence has a liberty interest, not extinguished by his confinement as a criminal, in not being transferred to a mental institution and hence classified as mentally ill without appropriate procedures to prove that he was mentally ill. "The loss of liberty produced by an involuntary commitment is more than a loss of freedom from confinement." *Id.* at 492. Due process requires that the nature of commitment bear some reasonable relation to the purpose for which the individual is committed. *Jones*, *supra,* at 368; *Jackson* v. *Indiana*, 406 U. S. 715, 738 (1972). Here, according to the testimony given at the hearing in the trial court, Foucha is not suffering from a mental disease or illness. If he is to be held, he should not be held as a mentally ill person. See *Jones*, *supra*, at 368; *Jackson*, *supra*, at 738. Cf. *United States* v. *Salerno*, 481 U. S. 739, 747–748 (1987); *Schall* v. *Martin*, 467 U.S. 253, 270 (1984).

Second, if Foucha can no longer be held as an

insanity acquittee in a mental hospital, he is entitled to constitutionally adequate procedures to establish the grounds for his confinement. *Jackson* v. *Indiana*, *supra,* indicates as much. There, a person under criminal charges was found incompetent to stand trial and was committed until he regained his sanity. It was later determined that nothing could be done to cure the detainee, who was a deaf mute. The state courts refused to order his release. We reversed, holding that the State was entitled to hold a person for being incompetent to stand trial only long enough to determine if he could be cured and become competent. If he was to be held longer, the State was required to afford the protections constitutionally required in a civil commitment proceeding. We noted, relying on *Baxstrom* v. *Herold*, 383 U. S. 107 (1966), that a convicted criminal who allegedly was mentally ill was entitled to release at the end of his term unless the State committed him in a civil proceeding. ```[T]here is no conceivable basis for distinguishing the commitment of a person who is nearing the end of a penal term from all other civil commitments.''' *Jackson* v. *Indiana, supra,* at 724, quoting *Baxstrom*, *supra*, at 111–112.

Third, "the Due Process Clause contains a substantive component that bars certain arbitrary, wrongful government actions `regardless of the fairness of the procedures used to implement them.''' *Zinermon* v. *Burch,* 494 U. S. 113, 125 (1990). See also *Salerno, supra,* at 746; *Daniels* v. *Williams*, 474 U. S. 327, 331 (1986). Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action. *Youngberg* v. *Romeo*, 457 U. S. 307, 316 (1982). ``It is clear that commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection.'' *Jones*, *supra*, at 361 (internal quotation marks omitted.) We have always been careful not to ``minimize the importance and

fundamental nature'' of the individual's right to liberty. *Salerno*, *supra*, at 750.

A State, pursuant to its police power, may of course imprison convicted criminals for the purposes of deterrence and retribution. But there are constitutional limitations on the conduct that a State may criminalize. See, *e. g.*, *Brandenburg* v. *Ohio*, 395 U.S. 444 (1969); *Robinson* v. *California*, 370 U.S. 660 (1962). Here, the State has no such punitive interest. As Foucha was not convicted, he may not be punished. *Jones*, *supra*, at 369. Here, Louisiana has by reason of his acquittal exempted Foucha from criminal responsibility as La. Rev. Stat. Ann. §14:14 (West 1986) requires. See n.1, *supra*.

The State may also confine a mentally ill person if it shows "by clear and convincing evidence that the individual is mentally ill and dangerous," *Jones,* 463 U.S., at 362. Here, the State has not carried that burden; indeed, the State does not claim that Foucha is now mentally ill.

We have also held that in certain narrow circumstances persons who pose a danger to others or to the community may be subject to limited confinement and it is on these cases, particularly *United States* v. *Salerno, supra,* that the State relies in this case.

Salerno, unlike this case, involved pretrial detention. We observed in *Salerno* that the "government's interest in preventing crime by arrestees is both legitimate and compelling," *id.*, at 749, and that the statute involved there was a constitutional implementation of that interest. The statute carefully limited the circumstances under which detention could be sought to those involving the most serious of crimes (crimes of violence, offenses punishable by life imprisonment or death, serious drug offenses, or certain repeat offenders), *id.*, at 747, and was narrowly focused on a particularly acute problem in which the government interests are overwhelming. *Id.*, at

750. In addition to first demonstrating probable cause, the government was required, in a "full-blown adversary hearing," to convince a neutral decision-maker by clear and convincing evidence that no conditions of release can reasonably assure the safety of the community or any person, *i.e.*, that the "arrestee presents an identified and articulable threat to an individual or the community." *Id.*, at 751. Furthermore, the duration of confinement under the Act was strictly limited. The arrestee was entitled to a prompt detention hearing and the maximum length of pretrial detention was limited by the "stringent time limitations of the Speedy Trial Act." *Id.*, at 747. If the arrestee were convicted, he would be confined as a criminal proved guilty; if he were acquitted, he would go free. Moreover, the Act required that detainees be housed, to the extent practicable, in a facility separate from persons awaiting or serving sentences or awaiting appeal. *Id.*, at 747–748.

Salerno does not save Louisiana's detention of insanity acquittees who are no longer mentally ill. Unlike the sharply focused scheme at issue in *Salerno*, the Louisiana scheme of confinement is not carefully limited. Under the state statute, Foucha is not now entitled to an adversary hearing at which the State must prove by clear and convincing evidence that he is demonstrably dangerous to the community. Indeed, the State need prove nothing to justify continued detention, for the statute places the burden on the detainee to prove that he is not dangerous. At the hearing which ended with Foucha's recommittal, no doctor or any other person testified positively that in his opinion Foucha would be a danger to the community, let alone gave the basis for such an opinion. There was only a description of Foucha's behavior at Feliciana and his antisocial personality, along with a refusal to certify that he would not be dangerous. When directly asked whether Foucha would be dangerous, Dr. Ritter said

only "I don't think I would feel comfortable in certifying that he would not be a danger to himself or to other people." App. 18. This, under the Louisiana statute, was enough to defeat Foucha's interest in physical liberty. It is not enough to defeat Foucha's liberty interest under the Constitution in being freed from indefinite confinement in a mental facility.

Furthermore, if Foucha committed criminal acts while at Feliciana, such as assault, the State does not explain why its interest would not be vindicated by the ordinary criminal processes involving charge and conviction, the use of enhanced sentences for recidivists, and other permissible ways of dealing with patterns of criminal conduct. These are the normal means of dealing with persistent criminal conduct. Had they been employed against Foucha when he assaulted other inmates, there is little doubt that if then sane he could have been convicted and incarcerated in the usual way.

It was emphasized in *Salerno* that the detention we found constitutionally permissible was strictly limited in duration. 481 U. S., at 747; see also *Schall*, 467 U. S., at 269. Here, in contrast, the State asserts that because Foucha once committed a criminal act and now has an antisocial personality that sometimes leads to aggressive conduct, a disorder for which there is no effective treatment, he may be held indefinitely. This rationale would permit the State to hold indefinitely any other insanity acquittee not mentally ill who could be shown to have a personality disorder that may lead to criminal conduct. The same would be true of any convicted criminal, even though he has completed his prison term. It would also be only a step away from substituting confinements for dangerousness for our present system which, with only narrow exceptions and aside from permissible confinements for mental illness, incarcerates only those who are proved beyond reasonable doubt to have violated a criminal law.

"In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States* v. *Salerno*, *supra*, at 755. The narrowly focused pretrial detention of arrestees permitted by the Bail Reform Act was found to be one of those carefully limited exceptions permitted by the Due Process Clause. We decline to take a similar view of a law like Louisiana's, which permits the indefinite detention of insanity acquittees who are not mentally ill but who do not prove they would not be dangerous to others.[6]

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[6] JUSTICE THOMAS' dissent firmly embraces the view that the State may indefinitely hold an insanity acquittee who is found by a court to have been cured of his mental illness and who is unable to prove that he would not be dangerous. This would be so even though, as in this case, the court's finding of dangerousness is based solely on the detainee's antisocial personality that apparently has caused him to engage in altercations from time to time. The dissent, however, does not challenge the holding of our cases that a convicted criminal may not be held as a mentally ill person without following the requirements for civil commitment, which would not permit further detention based on dangerousness alone. Yet it is surely strange to release sane but very likely dangerous persons who have committed a crime knowing precisely what they were doing but continue to hold indefinitely an insanity detainee who committed a criminal act at a time when, as found by a court, he did not know right from wrong. The dissent's rationale for continuing to hold the insanity acquittee would surely justify treating the convicted felon in the same way, and if put to it, it appears that the dissent would permit it. But as indicated in the text, this is not consistent with our present system of justice.

III

It should be apparent from what has been said earlier in this opinion that the Louisiana statute also discriminates against Foucha in violation of the Equal Protection Clause of the Fourteenth Amendment. *Jones* established that insanity acquittees may be

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JUSTICE THOMAS relies heavily on the American Law Institute's (ALI) Model Penal Code and Commentary. However, his reliance on the Model Code is misplaced and his quotation from the Commentary is importantly incomplete. JUSTICE THOMAS argues that the Louisiana statute follows ``the current provisions'' of the Model Penal Code, but he fails to mention that §4.08 is ``current'' only in the sense that the Model Code has not been amended since its approval in 1962, and therefore fails to incorporate or reflect substantial developments in the relevant decisional law during the intervening three decades. Thus, although this is nowhere noted in the dissent, the Explanatory Notes expressly concede that related and similarly ``current'' provisions of Article 4 are unconstitutional. See, *e.g.*, ALI, Model Penal Code, §4.06(2) Explanatory Note, (1985)(noting that §4.06(2), permitting indefinite commitment of a mentally incompetent defendant without the finding required for civil commitment, is unconstitutional in light of *Jackson* v. *Indiana*, 406 U.S. 715 (1972), and other decisions of this Court). Nor indeed does JUSTICE THOMAS advert to the 1985 Explanatory Note to §4.08 itself, even though that Note directly questions the constitutionality of the provision that he so heavily relies on; it acknowledges, as JUSTICE THOMAS does not, that ``it is now questionable whether a state may use the single criterion of dangerousness to grant discharge if it employs a different standard for release of persons civilly committed.'' JUSTICE THOMAS also

treated differently in some respects from those persons subject to civil commitment, but Foucha, who is not now thought to be insane, can no longer be so classified. The State nonetheless insists on holding him indefinitely because he at one time committed a criminal act and does not now prove he is not dangerous. Louisiana law, however, does not provide for similar confinement for other classes of persons who

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recites from the Commentary regarding §4.08. However, the introductory passage that JUSTICE THOMAS quotes prefaces a more important passage that he omits. After explaining the rationale for the questionable provision, the Commentary states: ``Constitutional doubts . . . exist about the criterion of dangerousness. If a person committed civilly must be released when he is no longer suffering mental illness, it is questionable whether a person acquitted on grounds of mental disease or defect excluding responsibility can be kept in custody solely on the ground that he continues to be dangerous.'' *Id.,* §4.08, Comment 3, p. 260. Thus, while JUSTICE THOMAS argues that the Louisiana statute is not a relic of a bygone age, his principal support for this assertion is a 30-year-old provision of the Model Penal Code whose constitutionality has since been openly questioned by the ALI Reporters themselves.

Similarly unpersuasive is JUSTICE THOMAS' claim regarding the number of States that allow confinement based on dangerousness alone. First, this assertion carries with it an obvious but unacknowledged corollary—the vast majority of States do not allow confinement based on dangerousness alone. Second, JUSTICE THOMAS' description of these state statutes also is importantly incomplete. Even as he argues that a scheme of confinement based on dangerousness alone is not a relic of a bygone age, JUSTICE THOMAS neglects to mention that two of the statutes he relies on have

have committed criminal acts and who cannot later prove they would not be dangerous. Criminals who have completed their prison terms, or are about to do so, are an obvious and large category of such persons. Many of them will likely suffer from the same sort of personality disorder that Foucha exhibits. However, state law does not allow for their continuing confinement based merely on dangerousness. Instead, the State controls the behavior of these similarly situated citizens by relying on other means, such as punishment, deterrence, and supervised release. Freedom from physical restraint being a

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been amended, as JUSTICE O'CONNOR notes. Nor does JUSTICE THOMAS acknowledge that at least two of the other statutes he lists as permitting confinement based on dangerousness alone have been given a contrary construction by highest state courts, which have found that the interpretation for which JUSTICE THOMAS cites them would be impermissible. See *State* v. *Fields*, 77 N.J. 282, 390 A.2d 574 (1978); *In re Lewis*, 403 A.2d 1115, 1121 (Del. 1979), quoting *Mills* v. *State*, 256 A.2d 752, 757, n.4 (Del. 1969) (``By necessary implication, the danger referred to must be construed to relate to mental illness for the reason that dangerousness without mental illness could not be a valid basis for indeterminate confinement in the State hospital.''). See also ALI, Model Penal Code, *supra,* at 260 (although provisions may on their face allow for confinement based on dangerousness alone, in virtually all actual cases the questions of dangerousness and continued mental disease are likely to be closely linked). As the widespread rejection of the standard for confinement that JUSTICE THOMAS and JUSTICE KENNEDY argue for demonstrates, States are able to protect both the safety of the public and the rights of the accused without challenging foundational principles of American criminal justice and constitutional law.

fundamental right, the State must have a particularly convincing reason, which it has not put forward, for such discrimination against insanity acquittees who are no longer mentally ill.

Furthermore, in civil commitment proceedings the State must establish the grounds of insanity and dangerousness permitting confinement by clear and convincing evidence. *Addington*, 441 U.S., at 425–433. Similarly, the State must establish insanity and dangerousness by clear and convincing evidence in order to confine an insane convict beyond his criminal sentence, when the basis for his original confinement no longer exists. See *Jackson*, 406 U.S., at 724; *Baxstrom*, 383 U.S., at 111–112. Cf. *Humphrey* v. *Cady*, 405 U.S. 504, 510–511 (1972). However, the State now claims that it may continue to confine Foucha, who is not now considered to be mentally ill, solely because he is deemed dangerous, but without assuming the burden of proving even this ground for confinement by clear and convincing evidence. The court below gave no convincing reason why the procedural safeguards against unwarranted confinement which are guaranteed to insane persons and those who have been convicted may be denied to a sane acquittee, and the State has done no better in this Court.

For the foregoing reasons the judgment of the Louisiana Supreme Court is reversed.

So ordered.