No. 15A1175

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2016

JEFFREY DUNN, Commissioner,
Alabama Department of Corrections
Petitioner,

v.

VERNON MADISON, Respondent

PETITIONER'S RESPONSE TO STATE'S MOTION TO VACATE STAY OF EXECUTION

The State's Motion to Vacate the Stay of Execution is due to be denied. Mr. Madison's competency claim has not been reviewed on appeal in either state or federal court. Because of a quirk in Alabama law, counsel for Mr. Madison was not permitted to appeal the state trial court's determination that Mr. Madison is competent to be executed. See Ala. Code §15-16-23 ("This mode of suspending the execution of sentence after conviction on account of the insanity of the convict shall be exclusive and final and shall not be reviewed or revised by or renewed before any other court or judge"); Weeks v. State, 663 So. 2d 1045, 1046 (Ala. Crim. App.

1995) (finding by the trial court on the issue of insanity, as it relates to this statute, is not reviewable by any other court"); Magwood v. State, 449 So. 2d 1267, 1268 (Ala. Crim. App. 1984) (Alabama Code explicitly prohibits appellate review of trial court's competency findings).

In Panetti v. Quarterman, 551 U.S. 930, 945-46 (2007), this Court recognized that when competency claims arise, petitioners should seek review in federal district courts, and that is precisely what Mr. Madison did. While the district court correctly recognized that Mr. Madison's habeas corpus petition was properly filed, it nevertheless rejected his competency claim. In doing so, however, it relied on the state trial judge's unreviewed findings and then tried to block appellate review in federal court by denying a Certificate of Appealability. Madison v. Dunn, No. 1:16-cv-00191-KD-M, at *22-23 (S.D. Ala. May 10, 2016). On appeal, the United States Court of Appeals for the Eleventh Circuit below properly determined that an appeal was appropriate so that there could be adequate review of the complex questions in this case.

I. MR. MADISON'S CLAIM THAT HE IS INCOMPETENT TO BE EXECUTED UNDER FORD V. WAINWRIGHT AND PANETTI V. QUARTERMAN HAS SUBSTANTIAL MERIT THAT CANNOT BE RESOLVED BEFORE HIS SCHEDULED EXECUTION.

This Court made clear in Barefoot v. Estelle, 463 U.S. 880 (1983), superseded on other grounds by 28 U.S.C. § 2253(c), that a stay of execution should be granted when necessary to "give non-frivolous claims of constitutional error the careful attention that they deserve." 436 U.S. at 888. Vernon Madison is not competent to be executed because he suffers from a major vascular neurological disorder, or vascular dementia, resulting from a thalamic stroke he suffered in January 2016. (Doc. 8-1 at 107.) Due his reduced mental functioning and memory deficits that have resulted from this stroke and corresponding dementia, he is unable to recollect the sequence of events from the offense, to his arrest, to his trial (Doc. 8-3 at 18-19,) and Mr. Madison can no longer connect the underlying offense to his punishment.

In Ford v. Wainwright, this Court held that the Eighth Amendment prohibits states from executing those who are mentally incompetent. 477 U.S. 399, 409-10 (1986). Subsequently, in Panetti v. Quarterman, this Court reaffirmed the basic premise of Ford, holding that the Eighth

Amendment prohibits states from executing prisoners who cannot comprehend "the meaning and purpose of the punishment to which he has been sentenced." Id. at 960. Panetti noted that "today, no less than before, we may seriously question the retributive value of executing a person who has no comprehension of why he has been singled out and stripped of his fundamental right to life." 551 U.S. 930, 957 (2007) (quoting Ford, 477 U.S. at 409-410).

In determining what was required by Ford, Panetti looked at how Ford formulated its inquiry into competency to be executed, in order to determine what is required of state courts making a competency evaluation. Panetti found that it required a finding that it could be conceived as either a question about the prisoner's "ability to 'comprehen[d] the reasons' for his punishment or as a determination into whether he is "unaware of . . . why [he is] to suffer it." 551 U.S. at 958 (quoting Ford, 477 U.S. at 418 and id. at 423 (Powell, J., concurring)). Similarly, Panetti requires an inquiry into a prisoner's ability to comprehend his punishment. Id. at 960.

The Eleventh Circuit's grant of a stay was appropriate because, like

in Panetti, the state court here applied a standard more restrictive than what this Court's precedent requires and consequently removed the key evidence of Mr. Madison's incompetency from its consideration. 551 U.S. at 956-57 (The state court's standard for determining incompetency to be executed " is too restrictive to afford a prisoner the protections granted by the Eighth Amendment"). Therefore, the state court's decision was contrary to and an unreasonable application of clearly established federal law and an unreasonable determination of the facts in light of the evidence presented at the competency proceeding. 28 U.S.C. § 2254(d)(1) and (2).

Application of the Panetti standard to the evidence and testimony in this case clearly establishes that Mr. Madison is not competent to be executed. Dr. Goff determined that as a result of a thalamic stroke, Mr. Madison suffers from major vascular neurological disorder or vascular dementia, which has resulted in significant memory impairment, a decline in cognitive functioning. Due his reduced mental functioning and memory deficits which render him unable to recollect the sequence of events from the offense, to his arrest, to his trial, (Doc. 8-3 at 18-19), Mr.

Madison can no longer connect the underlying offense to his punishment. Consequently, he does not have the ability to rationally understand the reason why the State is seeking to execute him. (Doc. 8-3 at 19; Doc. 8-1 at 101, 105, 107, 110, 119-20.)

In Panetti, this Court made clear that AEDPA does not "prohibit a federal court from finding an application of a principle unreasonable when it involves a set of facts 'different from those of the case in which the principle was announced.'" Panetti, 551 U.S. at 960 (quoting Lockyer v. Andrade, 538 U.S. 63, 76 (2003)); Wiggins v. Smith, 539 U.S. 510, 520 (2003) ("We have made clear that the 'unreasonable application' prong of § 2254(d)(1) permits a federal habeas court to 'grant the writ if the state court identifies the correct governing legal principle from this Court's decisions but unreasonably applies that principle to the facts' of petitioner's case.") (quoting Williams, 529 U.S. at 413). In Panetti, this Court found that Ford "broadly identif[ied]" the "substantive standard of incompetency," and consequently held that the "strict" standard imposed by the state court did not comply with Ford. Id. at 961.

Ford made clear that it is unconstitutional to execute "a person who

has no comprehension of why he has been singled out and stripped of his fundamental right to life." 477 U.S. at 409. Panetti clarified that this principle dictates that a prisoner is incompetent to be executed if "he cannot reach a rational understanding of the reason for the execution." 551 U.S. at 958. The crux of this Court's holding in Panetti is that a prisoner must have a rational understanding of why he is being executed and that a mental impairment that interferes with that understanding will render a prisoner incompetent. 551 U.S. at 958 (determination of competency requires inquiry into "prisoner's ability to 'comprehen[d] the reasons' for his punishment" or "a determination into whether he is 'unaware of . . . why [he is] to suffer it'") (quoting Ford, 477 U.S. at 418 and id. at 423 (Powell, J., concurring)); see also Stanley v. Chappell, No. 3:07-CV-04727-EMC, 2013 WL 3811205, at *1 (N.D. Cal. July 16, 2013) (finding death-row prisoner incompetent to be executed due to dementia caused, at least in part, by encephalomalacia).

Evidence of Mr. Madison's dementia and corresponding cognitive impairment and memory deficits and corresponding inability to rationally understand why the State is attempting to execute him demonstrate that

his claim is meritorious and a stay of execution is warranted. See Barefoot, 463 U.S. at 893-94.

CONCLUSION

For these reasons, the State's Motion for Stay of Execution should be denied.

Respectfully Submitted,

/s/ Bryan Stevenson
BRYAN A. STEVENSON
Counsel of Record
RANDALL S. SUSSKIND
ANGELA L. SETZER
Equal Justice Initiative
122 Commerce Street
Montgomery, AL 36104
(334) 269-1803

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