

termination of Ms. Ealey's sanity and whether the use of *M'Naughten* violated her due process rights and should be replaced with the Model Penal Code in Mississippi.

With regard to determination of sanity, both the sufficiency of the evidence and the weight of the evidence were considered. The court noted that the evidence provided for the jury to determine Ms. Ealey's sanity was sufficient based upon previous case law. In evaluation of the weight of the evidence, the court relied heavily on the standards set forth in *Woodham v. State*, 779 So. 2d 158 (Miss. 2001). In that case, the jury was given discretion to examine the testimony provided by experts and held that the jury decision regarding sanity would not be overturned if supported by substantial evidence. The court agreed that the expert testimony and evidence suggested that Ms. Ealey had depression; however, they found no merit in her assertion that two of the experts regarded her as insane and further noted that no experts found her insane according to *M'Naughten*.

Ms. Ealey also appealed on the basis that the use of *M'Naughten* violated her due process rights. The court asserted that Ms. Ealey did not elucidate how her due process rights were violated, and as such, it did not find merit to review her allegation. She further requested that the court use § 4.01 of the Model Penal Code rather than *M'Naughten* for the determination of sanity. The court cited multiple cases that rejected this request and cited the rule of *stare decisis* when upholding the use of *M'Naughten* as the standard regarding the insanity defense for Mississippi.

Discussion

The holdings in *Ealey* highlight the various assertions that have been made regarding the use of an insanity defense and the importance of code-specific verbiage by forensic experts. The *M'Naughten* standard for insanity is currently used in 25 states; the District of Columbia and 20 states use the Model Penal Code; and New Hampshire uses the Durham standard. Four states (Kansas, Montana, Idaho, and Utah) do not allow the insanity defense. The burden of proof for the verdict varies by state.

In this case, the experts each conducted evaluations to determine the potential presence of mental illness and insanity based on the *M'Naughten* standard. Although each agreed that Ms. Ealey met the criteria for depression, conflicting testimony was provided regarding her sanity at the time of the offense. In addition, each evaluator's testimony varied slightly regarding the degree to

which her depression affected her judgment. Presumably, insanity would have been found based on Dr. Lott's testimony, if the Model Penal Code had been the standard for insanity.

The opinions contained within previous cases cited by *Ealey v. State* provide insight into the court's rationale to maintain *M'Naughten*. In *Hill v. State*, 339 So. 2d 1382 (Miss. 1976), Justice Broom wrote that the adoption of the Model Penal Code:

... would provide for the acquittal of those who commit criminal acts and assert that they did such act or acts because of so-called uncontrollable urges or irresistible impulses. Though the *M'Naughten* Rule may not be a perfect means to test criminal responsibility, as this Court (including this writer) has said before, it is the safest of the rules proposed. *M'Naughten* better protects society's needs than the American Law Institute's proposed rule, *supra*, which the court has examined in earlier cases and found to be unsatisfactory [*Hill*, p 1385].

In addition, although the court did not merit her claim based on lack of articulation, Ms. Ealey's claim regarding due process violations related to *M'Naughten* is not a novel assertion. In *Clark v. Arizona*, 548 U.S. 735 (2006), the United States Supreme Court upheld that Arizona's use of a modified *M'Naughten* standard does not violate due process and that there is no constitutional minimum required with regard to delineating the verbiage of an insanity standard. The relevance of this decision is important for future cases that may question due process violations in insanity cases.

Disclosures of financial or other potential conflicts of interest: None.

Mental Health Concerns and Equitable Tolling

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Mental Health Matters Can Act as an Extraordinary Circumstance for Equitable Tolling Claims

In *Spears v. Warden*, 605 Fed. Appx. 900 (11th Cir. 2015), the Eleventh Circuit Court of Appeals affirmed the denial of *habeas corpus* by the U.S. Dis-

trict Court for the Middle District of Georgia. The appeals court ruled that Mr. Spears did not show due diligence in filing an appeal in light of extraordinary circumstances. The appeals court opined that, despite being transferred between various prison institutions while under the sedative effects of psychotropic medications, Mr. Spears was not entitled to equitable tolling for the untimely filing of his appeal.

Facts of the Case

In February 2001, Gary Ray Spears was indicted on counts of murder, felony murder, aggravated assault, aggravated battery, possession of a firearm during the commission of a crime, and kidnapping. The state originally sought the death penalty, but after plea negotiations, Mr. Spears pleaded guilty to a subset of these offenses.

At the plea hearing, Mr. Spears' attorney noted that Mr. Spears had some psychological problems and was taking antidepressant medication. Yet, his attorney did not believe this affected his ability to understand the plea hearing. In March of 2001, Mr. Spears was sentenced to life in prison without parole. He accepted the plea and did not directly appeal.

In December 2007, Mr. Spears filed a *habeas corpus* petition in Georgia state court, marking his first challenge to his conviction. He alleged ineffective assistance of counsel and raised the question of whether his guilty plea was knowing and voluntary. At the state evidentiary hearing, his former counsel noted that after numerous interactions with his client, he believed that Mr. Spears was competent to enter a plea. His counsel also had Mr. Spears evaluated by a mental health expert to consider an insanity defense, but his counsel felt that there was not a sufficient basis for the defense after the evaluation. In October 2011, the state court denied his writ.

In June 2012, Mr. Spears filed a federal petition for a writ of *habeas corpus* under 28 U.S.C. § 2254 after exhausting all remedies available through the state court system. He made arguments similar to those he had made in his state petition. He also brought forth an equitable tolling argument for his untimely petition, citing two reasons. First, he argued that he had been misled by his counsel into believing that he had no right to appeal. Second, he indicated that he was transferred between prisons while heavily sedated with psychotropic medications. He provided evidence of his five transfers be-

tween prisons from August 2001 through April 2002.

The magistrate judge rejected Mr. Spears's argument of equitable tolling without holding an evidentiary hearing and dismissed his petition as untimely. The judge found that Mr. Spears did not establish an extraordinary circumstance to prevent timely filing of his appeal, nor did he exercise due diligence from 2001 through 2007. The district court overruled Mr. Spears' *pro se* objections and adopted the magistrate judge's report and recommendation. The Eleventh Circuit Court of Appeals appointed counsel for Mr. Spears and granted a Certificate of Appealability to determine if the district court erred in its ruling on whether Mr. Spears was entitled to equitable tolling for the filing of his petition under 28 U.S.C. § 2254 (2000).

Ruling and Reasoning

As amended by the Antiterrorism and Effective Death Penalty Act (AEDPA) of 1996, *habeas* petitions are subject to a one-year statute of limitations. The appeals court established that there was no dispute that the petition in this case was beyond the one-year time limit. It noted, however, that the district court could still review the merits of an untimely § 2254 petition if the petitioner shows a basis for equitable tolling.

The appeals court relied largely on precedent when discussing Mr. Spears' claims. In *Holland v. Florida*, 560 U. S. 631 (2010), the court ruled that a petitioner is entitled to equitable tolling if he shows that he pursued his rights diligently and that an extraordinary circumstance prevented timely filing. In *San Martin v. McNeil*, 633 F. 3d 1257 (11th Cir. 2011), the appeals court ruled that, in proving an extraordinary circumstance, the defendant must show a causal connection between the circumstance and the late filing. The *San Martin* ruling also clarified that reasonable diligence was required, not maximum feasible diligence.

In *Spears*, the appeals court ruled that the district court did not err in its finding. The court held to precedent that attorney negligence, no matter how egregious, cannot be used for purposes of equitable tolling. In addition, *pro se* litigants are responsible for knowing of the one-year statute of limitations.

Yet, the appeals court acknowledged, with respect to Mr. Spears' allegations about his mental incapacity and prison transfers, that "some basis exists for concluding that Spears was prevented from timely filing a § 2254 petition by extraordinary circumstances for some period of time" (*Spears*, p 904). The

court noted that Mr. Spears was transferred five times for mental health reasons during the AEDPA limitation period and asserted, “the period in which Spears was ‘drugged to near-sedation’ may constitute an exceptional circumstance for purposes of equitable tolling because it would have been outside of his control and unavoidable even with due diligence” (*Spears*, p 904).

However, the appeals court noted that mental impairment alone does not justify an untimely petition. Instead, a causal connection between the mental impairment and the ability to file must be made. The appeals court reasoned that “Spears has not explained how his mental-health issues or medications, apart from the drug-induced prison transfers, affected his ability to file a timely petition” (*Spears*, p 905).

Finally, the appeals court noted that equitable tolling involves both extraordinary circumstances and due diligence. With regard to due diligence, the court indicated that from April 2002 to December 2007, Mr. Spears did not seek information about his appeal or postconviction rights because he believed that he did not have the right to appeal, but the court asserted, “procedural ignorance is not an excuse for prolonged inattention when a statute calls for prompt action” (*Spears*, p 905).

Discussion

The appeals court relied largely on precedent in forging its opinion. Precedent sets forth that attorney negligence and *pro se* litigant ignorance are not extraordinary circumstances as understood under equitable tolling. In addition, equitable tolling relies on a two-prong assessment of an extraordinary circumstance and reasonable due diligence to be satisfied.

The appeals court acknowledged that multiple mental health transfers in quick succession between prisons while heavily medicated could suffice as an extraordinary circumstance. The court viewed such a situation as outside of the defendant’s control and unavoidable, which sets forth a basis for future equitable tolling claims. However, the appeals court provided a reasonable caveat, in that a history of these events must be causally linked to the defendant’s ability to file a petition in a timely matter. Thus, experience of these events alone, does not qualify for an equitable tolling argument without a causal link to explain the failure to file in a timely fashion.

Disclosures of financial or other potential conflicts of interest: None.

Defendant’s Claims of Inadequate Counsel in Death Penalty Case

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Trial Counsel’s Decision to List an Unsupportive Psychiatrist as a Defense Witness Did Not Constitute Ineffective Assistance of Counsel

In *Miller v. State*, 161 So. 3d 354 (Fla. 2015), the Supreme Court of Florida affirmed the denial by the Circuit Court in and for Orange County of Mr. Miller’s petition for a writ of *habeas corpus* with claimed ineffective assistance of counsel in Mr. Miller’s trial and sentencing for first-degree murder. Among the questions raised were counsel’s decision to list a non-supportive psychiatrist as a defense witness and failure to obtain a pretrial positron emission tomography (PET) scan, to explore a possible diagnosis of behavioral variant frontotemporal dementia.

Facts of the Case

In April 2006, Lionel Miller attempted to burglarize Ms. Jerry Smith, a 72-year-old woman whom Mr. Miller had met two days prior in her neighborhood. On the day of the robbery Mr. Miller, high on crack cocaine, walked to Ms. Smith’s home carrying a file knife. Ms. Smith invited him in but became alerted to his intentions, and Mr. Miller attacked her. A passerby attempted to intervene and was stabbed by Mr. Miller. Ms. Smith ran, followed by Mr. Miller who then stabbed her three times. Mr. Miller fled the scene, discarding the knife. The passerby survived his wounds but Ms. Smith died during emergency surgery. At trial, it was learned that Ms. Smith had Alzheimer’s dementia.

Pretrial evaluations of Mr. Miller by a psychiatrist, Jeffrey Danziger, and a psychologist, Eric Mings, suggested mild cognitive and intellectual impairment. Dr. Mings also concluded that Mr. Miller was competent to waive his *Miranda* rights. However, both experts recommended that neuroimaging be conducted and trial counsel consulted with a neurologist.