

Does Dementia Qualify as a Mental Disorder That Could Affect Competency to Be Executed?

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U.S. Supreme Court Considers Whether a Death Row Inmate With Dementia Can be Executed Despite Having No Memory of Committing the Crime

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In *Madison v. Alabama*, 139 S. Ct. 718 (2019), the U.S. Supreme Court was asked to consider whether it violates the Eighth Amendment to execute a prisoner whose mental disability leaves him without memory of his commission of the capital offense, and whether the evolving standards of decency bar execution of a prisoner whose competency has been compromised by vascular dementia and multiple strokes. The Court ruled that the Eighth Amendment may permit executing a prisoner even if he did not have a memory of the crime. But if a prisoner, because of his dementia, could not rationally understand the reason the state was imposing execution because of his dementia, then he would not be competent to be executed.

Facts of the Case

In 1985, Vernon Madison was found guilty of capital murder and sentenced to death after he shot and killed an Alabama police officer during a domestic dispute. Over the last 30 years, while on death row, Mr. Madison has had multiple strokes and been diagnosed with vascular dementia. He experiences amnesia and is disoriented to time and place. His strokes have also left him with several physical disabilities, such as blindness, slurred speech, inability to ambulate independently, and incontinence.

In 2016, Mr. Madison petitioned for a suspension of his execution, claiming that he was mentally incompetent and could no longer recall the crime. He cited *Ford v. Wainwright*, 477 U.S. 399 (1986) and *Panetti v. Quarterman*, 551 U.S. 930 (2007), and claimed that due to his cognitive decline he no longer understood “the nature of his conviction and sentence” (*Madison*, p 723). The district court held a competency hearing and heard testimony from two forensic psychologists. Dr. John Goff diagnosed Mr. Madison with major vascular neurological disease and stated that, although Mr. Madison understood the nature of the execution, he did not understand the reasoning behind the state’s desire to execute him. Dr. Goff also highlighted the fact that Mr. Madison had retrograde amnesia and had no recollection of the crime. Dr. Karl Kirkland testified for the state of Alabama and did not provide a diagnosis. He acknowledged the history of strokes and the resulting cognitive decline. Dr. Kirkland reported that Mr. Madison was able to discuss his case and understood his legal situation. He highlighted that Mr. Madison did not exhibit any type of psychosis, paranoia, or delusion. During the hearing, the state also stressed the fact that Mr. Madison did not have signs of psychosis or delusions and could, therefore, not be found incompetent for execution. The court found Mr. Madison competent to be executed and held that he had failed to show that he did not rationally understand the punishment and reason for it. Toward the end of the opinion the court also stressed that there was no evidence that Mr. Madison was delusional or psychotic.

The federal district court denied Mr. Madison’s petition for *habeas corpus*. The Eleventh Circuit Court of Appeals reversed this decision, stating that Mr. Madison had met criteria for reversal under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), 28 U.S.C. § 2254(d) (1996). The U.S. Supreme Court, in *Dunn v. Madison*, 138 S. Ct. 9 (2017), reversed the Eleventh Circuit’s decision. At the time, the Court specifically stated that they expressed no view on the actual question of Mr. Madison’s competency and were simply reversing the decision based on the context of AEDPA.

After Alabama set an execution date in 2018, Mr. Madison again petitioned the state court, reiterating his previous arguments regarding his mental capacity to be executed. He added that his cognitive ability had further declined since 2016, and that Dr.

Kirkland's license to practice psychology had been suspended, therefore discrediting his testimony. The state responded with a motion to dismiss, arguing that nothing material had changed since the last competency hearing. The state also stressed that Mr. Madison was not delusional or psychotic, and, therefore, could not meet the standard of *Ford* and *Panetti*. The court found Mr. Madison competent a week prior to the scheduled execution. The U.S. Supreme Court granted Mr. Madison a stay of execution and *certiorari*.

Ruling and Reasoning

The Court held that, under *Ford* and *Panetti*, it is not a violation of the Eighth Amendment to execute a prisoner even if he does not have recollection of committing the crime. They made a point to further explain that the *Panetti* court already stated that the focus is whether a mental disorder affects the person's ability to rationally understand why the state is seeking execution. During oral arguments, counsel for Mr. Madison conceded to this interpretation without argument.

The Court further stated that, under *Ford* and *Panetti*, the Eighth Amendment would be violated by executing a prisoner who, due to dementia, does not rationally understand the reason for execution. They stressed that the *Panetti* standard was not concerned with which mental disorder was diagnosed. It was focused on the consequence of the mental disorder and whether it was interfering with the prisoner's rational understanding of his punishment. During oral arguments, the state conceded this point with no argument.

The third question the Court addressed was whether the district court had correctly applied the *Ford* and *Panetti* standard to their decision. Because the Court was not convinced that the district court's decision was not tainted by legal error, the case was remanded for further review. The Court cited multiple instances where the state had made arguments that exhibited an incorrect analysis of the *Panetti* standard. For example, in the state's motion to dismiss, the state stated that the incompetency statute does not include prisoners with dementia and implied that only delusions or psychosis could bar execution. The Court was further concerned with the fact that the state court used the word "insanity" in its 2018 decision about competency. They were not confident that the court was using the correct definition of "insanity" and were concerned about the 2016 ruling that stressed that Mr. Madison was not delusional or psychotic. The Court suggested that

the district court consider supplementing the record and not use any evidence that was tainted by the legal errors described in their opinion.

Dissent

Justice Alito, joined by Justices Thomas and Gorsuch, dissented and stated that they believed the petitioner had changed the question posed to the Court after review was granted. The dissent discussed the original petition for writ of *certiorari* at length, noting that the original question was whether it was a violation of the Eighth Amendment to execute a petitioner who had no memory of the crime. They concluded there was no supporting documentation for the question that was actually brought before the Court, which was whether the petitioner could be found incompetent to be executed due to a diagnosis of dementia. They believed the writ should have been dismissed on the grounds that *certiorari* was improperly granted.

Discussion

It should be interesting to see how this decision affects future proceedings, as the Court clearly articulated that diagnoses other than psychosis can be considered in the determination of a prisoner's competency to be executed. The Court's majority stated that *Panetti* clearly articulates that what causes a prisoner to lack rational understanding is not relevant, only that the prisoner lacked the rational understanding. Yet, it also seems clear that lower courts have taken a much narrower view of the *Panetti* decision. The fact that both *Ford* and *Panetti* involved prisoners with psychosis was significant for the lower court. There were many references throughout this case where both the state and the lower court's decision used the fact that Mr. Madison was not delusional or psychotic as evidence that he was competent to be executed.

It also remains to be seen whether this case, which involves a progressive, nonreversible condition (dementia) for which limited treatments exist, and an event (execution) that would not necessarily be scheduled close to the time of competency evaluations, will result in a finding (of competency or incompetency) that is considered final, or whether restoration or re-evaluation is pursued. With the vastly growing population of elderly prisoners, this case will likely have a large impact on future competency to be executed inquiries.

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