

making abilities, is one way to assist the court in making the ultimate competence determinations.

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## Competency to Waive Postconviction Review for a Death Sentence

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### A Court Rules a Defendant Competent to Waive Postconviction Review of a Death Sentence Despite Unanimous Expert Opinions of Incompetence

In *Corcoran v. Buss*, 551 F.3d 703 (7th Cir. 2008), the Seventh Circuit Court of Appeals affirmed the U.S. District Court and Indiana Supreme Court decision ruling that a person with a diagnosis of schizophrenia is competent to waive postconviction review of the death sentence despite unanimous expert opinions to the contrary.

#### Facts of the Case

On July 26, 1997, Joseph Corcoran shot and killed four men, including his brother and his sister's fiancé. During pretrial negotiations, the state made two offers: a guilty plea for life without parole or no death penalty sentence for waiving a jury trial. The defense counsel advised Mr. Corcoran to take an offer, as the evidence against him (including his own video-taped confession) was overwhelming. Two of three court-ordered psychiatrists found Mr. Corcoran competent to stand trial and to aid in his defense. The defense had initially given notice to the court that an insanity defense would be submitted. However, the defense withdrew the insanity defense after the court-appointed psychiatrists opined that he was

competent to proceed. The defense counsel brought in an experienced Indiana public defender to help convince Mr. Corcoran to accept an offer. He rejected the offers, and stated, "I just feel like I should go to trial." A jury found Mr. Corcoran guilty of first-degree murder, and on August 26, 1999, the trial court sentenced him to death.

Mr. Corcoran filed an appeal to challenge his death sentence but waived his right to appeal the conviction. He contended that the state's offer, requiring him to waive a jury trial and accept a bench trial in exchange for no death penalty, was coercive, forcing him to abandon a constitutional right. The Indiana Supreme Court rejected the appeal, observing that the discretionary power allowed prosecutors in crafting plea bargains is wide. However, the court remanded to re-evaluate aggravating factors. The trial court considered Mr. Corcoran's mental illness, but noted that it did not affect his ability to understand the law and control his behavior. The court also re-examined his cooperation with authorities, his lack of criminal history, and his remorse. However, the court reinstated the death penalty and the Indiana Supreme Court reaffirmed on September 5, 2002.

Mr. Corcoran subsequently changed his mind about appealing his death sentence and refused to sign the petition for postconviction relief. His public defender requested a court hearing in October 2003 to determine whether he was competent to waive postconviction review. Three mental health experts were enlisted, and all three found that Mr. Corcoran had paranoid schizophrenia with delusions. The experts unanimously opined that he was unable to make a rational decision concerning the legal proceedings and that his decision was motivated by a wish to die to obtain relief from his delusions. However, at the competency hearing, he testified, "I think I should be executed for what I have done and not because I am supposedly tortured with ultrasound or whatever. I am guilty of murder. I should be executed. That is all there is to it. That is what I believe. I believe the death penalty is a just punishment for four counts of murder" (*Corcoran*, p 717). The postconviction court ruled that he was competent to waive further appeals to his sentence and execution. It took notice that he had a mental illness but relied heavily on his own testimony for its decision.

The Indiana Supreme Court affirmed the court's finding of competency. It considered multiple fac-

tors including: the testimony of experts; Mr. Corcoran's not telling any expert that he wished to abandon his appeals to escape his delusions by death; prison records and testimony suggesting that his psychotic symptoms were well controlled; his testimony that he wanted to waive his appeals; and evidence that he was aware of his legal predicament.

Mr. Corcoran again reversed his position, petitioning on November 8, 2005, for a writ of *habeas corpus* with the U.S. District Court for the Northern District of Indiana, claiming that his constitutional rights had been violated, resulting in his conviction and death sentence. He again changed his mind and, on December 5, 2005, filed a *pro se* petition to halt all future appeals. On March 31, 2006, he sent a letter to the district court indicating that he had signed the postconviction petition to appease his wife and attorney and that he had fabricated the story about the ultrasound machine. In the letter he stated that he believed he would be found competent and he never intended to appeal the sentence. Despite his objections, the district court granted *habeas corpus* relief. The court ruled that the state's offer to forego a jury trial in exchange for no death penalty violated his right to a jury trial under *United States v. Jackson*, 390 U.S. 570 (1968). However, the court affirmed that he was competent to waive his postconviction review. It ordered him to be sentenced to something other than death. The state appealed the grant of *habeas corpus* and the defense cross-appealed, challenging the ruling of competency.

#### Ruling and Reasoning

Regarding the right to a jury trial, the Seventh Circuit Court of Appeals affirmed the decision by the Indiana Supreme Court and stated that the U.S. District Court had erred in its holding. The Seventh Circuit held that a prosecutor has wide discretion and that a defendant is free to accept or reject any offer.

Concerning competency to waive postconviction appeals relief, the Seventh Circuit affirmed the decision by the Indiana Supreme Court and the U.S. District Court's ruling that Mr. Corcoran was competent to waive his postconviction proceedings. The Seventh Circuit cited *Demosthenes v. Baal*, 495 U.S. 731 (1990), which held that the court is entitled to the presumption of competency to waive postconviction review when incompetency has not been established. The Seventh Circuit also referred to *Holmes v.*

*Buss*, 506 F.3d 576 (7th Cir. 2007), which stated that the defendant has a "tougher row to hoe" when challenging competence in postconviction proceedings compared with competence to stand trial. In *Rees v. Peyton*, 384 U.S. 312 (1966), the Supreme Court established the legal standard for a death row inmate's request to waive further proceedings. In *Rees* the Supreme Court held that the court must determine whether the petitioner has the ability to make a "rational choice" to discontinue proceedings or if his ability is "substantially" impaired by mental disease. In *Holmes*, the Seventh Circuit concluded:

If . . . the question is whether a petitioner for *habeas corpus* who has been sentenced to death is competent to withdraw a petition for certiorari filed on his behalf challenging the denial of *habeas corpus*, . . . the answer is unlikely to require that he understand more than that the withdrawal of his petition will almost certainly terminate any legal challenge to his death sentence" [*Holmes*, p 579]].

The Seventh Circuit reviewed the methodology and the evidence that the Indiana Supreme Court considered in finding Mr. Corcoran competent. It acknowledged that he had a diagnosis of schizophrenia with delusions, but it also noted that he had a clear awareness of the status of his case and that he stated that his decision was based on remorse. The Seventh Circuit ruled that the Indiana Supreme Court was justified in accepting his reasoning that his crimes deserved death. The Seventh Circuit referred to one of its previous decisions, *Wilson v. Lane*, 870 F.2d 1250 (7th Cir. 1989), in which it noted that the district court considered the defendant's "unwavering testimony," which demonstrated his competency and his preference for death over life in prison. In accordance with *Smith v. Armontrout*, 812 F.2d 1050 (8th Cir. 1987), it acknowledged that every attempt to waive death penalty postconviction proceedings may involve issues related to mental disease, but reiterated that *Rees* demonstrated that competent waivers are possible.

#### Dissent

Circuit Justice Williams dissented with his colleagues' conclusion that Mr. Corcoran was competent to waive postconviction review. He argued that two of the three reasons used by the Indiana Supreme Court to find Mr. Corcoran competent were "factual errors" and were directly contradicted by the record. He challenged the assertion that Mr. Corcoran never told any expert that he wanted to die and the statement that his psychotic symptoms were well con-

trolled with medication. He agreed that *Rees* was the correct standard and that clear and convincing evidence was required by Mr. Corcoran to refute the presumption of competency. Justice Williams also agreed with the Indiana Supreme Court, noting that in normal circumstances, Mr. Corcoran's testimony at the hearing may outweigh other testimony. He indicated that the court failed to consider Mr. Corcoran's testimony "in light of his delusions." Justice Williams concluded his dissent saying he would require litigation of Mr. Corcoran's postconviction petition in state court.

*Discussion*

The present case speaks to the potentially limited role of mental health experts in determining the outcome of legal proceedings surrounding competency to waive postconviction relief in capital cases. In *Rees*, the Supreme Court established the standard that the defendant must make a "rational choice" to discontinue proceedings. The Eighth Circuit in *Smith* observed that mental illness is a potential factor in nearly every death row inmate's choosing to waive postconviction relief, and thus is not, in and of itself, indicative of incompetency. The Supreme Court in *Demosthenes* affirmed the presumption of competency in postconviction proceedings. In *Holmes*, the Seventh Circuit, while emphasizing the importance of enlisting mental health experts, opined that the judge is the final authority in evaluating the mental capacities that a defendant requires to proceed and, as mentioned earlier, observed that challenging competency to waive postconviction relief is a "tougher row to hoe" than challenging competency to stand trial.

Two of three experts found Mr. Corcoran competent to stand trial, whereas three different experts unanimously agreed that he was incompetent to waive postconviction relief. These differences of opinion could reflect variations in the expression of authentic and dynamic psychotic symptoms that fluctuated and changed over the time between the assessments of competency to proceed and competency to waive postconviction relief. Although the legal bar for competency to proceed has been set higher than that for competency to waive postconviction relief, the proximity to a realized capital punishment may influence competency evaluators in the opposite direction. This legal stratification of competency requirements, with waiver of postconviction

relief requiring less, is likely to be experienced as dissonant with medical training and professional ethics by many forensic psychiatrists. For this reason, courts are compelled to reformulate medicolegal opinions in a manner that re-emphasizes legally determined criteria over clinical impressions. The *Corcoran* ruling serves as a reminder that the court has ultimate responsibility to evaluate expert opinion in light of additional information and will depart from expert opinion when psychiatric formulations are not persuasive in the context of the defendant's own testimony.

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## Ineffective Counsel in a Death Penalty Case

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### **Trial Counsel Was Ineffective for Allowing the Prosecution to Review a Report and Allowing Testimony of a Psychiatrist Retained by the Defense**

In *Sechrest v. Ignacio*, 549 F.3d 789 (9th Cir. 2008), the U.S. Court of Appeals for the Ninth Circuit affirmed that allowing the prosecution access to a psychiatrist's report retained for the defense and allowing that psychiatrist to testify in the penalty phase of a death penalty case represents ineffective counsel.

*Facts of the Case*

In May of 1983, Ricky Sechrest kidnapped and murdered 10-year-old Maggie Weaver and 9-year-old Carly Villa. In June of 1983, he was arrested. While waiting to be booked for an unrelated charge he confessed to the murder of both girls. Dr. Lynn