

Finally, the appellate court reviewed whether the district court erred in publishing the summary judgment without redactions. Ms. Frohn's only argument in opposition was that she did not waive the privilege voluntarily. But because Ms. Frohn's voluntariness had already been established, the appellate court affirmed the district court's judgment regarding the necessity of publishing without redactions.

Discussion

In this ruling, the Sixth Circuit highlighted key legal boundaries and exceptions to physician-patient confidentiality. Although medical records and communications between a patient and physician are privileged, there are exceptions, including the voluntary waiver of privilege by the deceased's spouse, as allowed under Ohio law. Records may also be compelled to be released under certain legal frameworks, such as court orders or discovery requests. The court referenced 45 C.F.R. § 164.512(e)(1), which allows the release of protected health information for legal proceedings, demonstrating a key exception to confidentiality rules.

The decision underscores the potential consequences of inaccuracies in medical disclosures. The court determined that incomplete or false medical history provided by Ms. Frohn was material to the issuance of the life insurance policy and justified its rescission. This emphasizes the importance of precise documentation by physicians, including psychiatrists, as inaccuracies can have significant legal and financial consequences for plaintiffs.

Forensic psychiatrists and physicians in general benefit from understanding that there are exceptions to the physician-patient privilege and that future litigation events may compel records to become public. Consideration of such eventualities should be made, or at least understood, when documenting, communicating, and retaining patient information.

New Mental Health Evidence in Federal Habeas Proceedings

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Supreme Court Overturns the Ninth Circuit's Writ of Habeas Corpus Based on Newly Presented Psychiatric Evidence

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In *Thornell v. Jones*, 144 S. Ct. 1302 (2024), the U.S. Supreme Court reversed the Ninth Circuit's earlier grant of a writ of *habeas corpus* in the case of an Arizona man sentenced to death for multiple murders. Although the Ninth Circuit found the psychiatric evidence presented at a lower court evidentiary hearing to be persuasive, the Supreme Court did its own analysis and found the newly presented evidence to be cumulative to that presented at trial and unavailing in light of the aggravating circumstances of the crime.

Facts of the Case

Danny Lee Jones was convicted in Arizona of the 1992 murder of his social acquaintance Robert Weaver, the murder of Mr. Weaver's seven-year-old daughter, and the attempted murder of Mr. Weaver's grandmother via bludgeoning with a baseball bat. The putative motive for the crime was theft of Mr. Weaver's gun collection, valued at \$2,000.

As part of the sentencing process (after finding Mr. Jones guilty), the trial court held an aggravation-mitigation hearing to determine whether capital punishment would be imposed. The trial court found four aggravating circumstances: the murder was done for pecuniary gain; the defendant committed the murder in an "especially heinous, cruel, or depraved manner;" convictions for multiple homicides; and one of the victims was under 15 years of age" (*State v. Jones*, 917 P.2d 200 (Ariz. 1996), p 207).

In favor of mitigation, the trial court identified four factors in Mr. Jones's favor: "[he] suffers from long-term substance abuse; at the time of the offense, [he] was under the influence of alcohol and drugs; [he] had a chaotic and abusive childhood; and [his] substance abuse problem may have been caused by genetic factors and aggravated by head trauma" (*State v. Jones*, p 207–8).

The trial court then sentenced Mr. Jones to two consecutive death sentences for the two murders and life imprisonment, without the possibility of release or parole for 25 years, for the attempted murder conviction. After his convictions and sentence were upheld on direct appeal, Mr. Jones filed for collateral review, including a federal *habeas* case that was denied by a district court.

Mr. Jones' unsuccessful *habeas* petition was based on trial counsel's alleged ineffectiveness in failing to present mental health evidence during the original sentencing. The federal district court held an evidentiary hearing where six mental health witnesses testified, three for the defense and three for the government. The defense experts testified about potential mitigation evidence: cognitive impairment, posttraumatic stress disorder (PTSD), new evidence of physical and sexual abuse when Mr. Jones was a minor, attention deficit and hyperactivity disorder (ADHD), a mood disorder, and substance use (alcohol, amphetamines, and cannabis). The district court found the evidence to be "inconclusive or cumulative" (*Jones v. Ryan*, 52 F.4th 1104 (9th Cir. 2022), p 1146) and ruled against Mr. Jones.

In 2022, the Ninth Circuit Court of Appeals overturned the district court's denial and granted the defendant a writ of *habeas corpus*, finding that defense "counsel failed to investigate [Mr.] Jones's mental condition as a mitigating factor, and he failed to obtain a defense mental health expert. Counsel was in possession of medical records showing that [Mr.] Jones formerly attempted suicide at age twenty-two. . . [Mr.] Jones experienced extreme moods swings, but these swings stabilized when he had been medicated with lithium" (*Ryan*, p 1118). The government appealed the Ninth Circuit's decision, and the Supreme Court granted *certiorari* in December 2023.

Ruling and Reasoning

Justice Alito wrote an opinion, joined by five other justices, overturning the Ninth Circuit's grant of *habeas corpus* to Mr. Jones. The Court reasoned that Mr. Jones's purportedly new evidence would merely have been cumulative to mental health evidence introduced at his original sentencing. The majority ruling wrote that the lower appellate court "overstated the strength of mitigating evidence that differed very little from the evidence presented at sentencing" (*Thornell*, p 1314).

Additionally, the Court found that the Ninth Circuit did not consider the aggravating factors taken

into account when Mr. Jones was sentenced to death, writing that the "weakness of [Mr.] Jones's mitigating evidence contrasts sharply with the strength of the aggravating circumstances" (*Thornell*, p 1313). These aggravating factors included the commission of multiple murders, one of which was of a child.

Applying the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984) for adjudicating ineffective assistance claims, the Court found that the lower appellate court "downplayed the serious aggravating factors present here and overstated the strength of mitigating evidence that differed very little from the evidence presented at sentencing" (*Thornell*, p 1314). The Court thus denied Mr. Jones's petition, because it was not reasonably likely that the new evidence would have led to a sentence other than death.

Dissent

Two separate dissenting opinions were filed. In the first, Justices Sotomayor and Kagan agreed with the majority that there was error in the Ninth Circuit's having "all but ignored" the aggravating factors discussed above. But these two justices would have remanded the case for further review as opposed to engaging in factual review and entering judgment against Mr. Jones.

It is worth noting that, when counting these two justices, eight of the nine justices found error in the Ninth Circuit's grant of the writ to Mr. Jones. The six-judge majority went further by actually entering judgment against Mr. Jones (denying him relief), whereas dissenting Justices Kagan and Sotomayor would have left factual reanalysis to the lower courts. That course would have left the door open for the Ninth Circuit to rule in Mr. Jones' favor in a subsequent appeal.

Finally, Justice Jackson, writing alone, dissented and stated that the "Ninth Circuit committed no legal error" in its review of the facts (*Thornell*, p 1316). Justice Jackson opined that the lower appellate court followed the appropriate methodology in weighing potentially mitigating evidence against the aggravating factors presenting at trial, even if the lower court's review was "concise."

Discussion

For those who advocate for the consideration of mental health factors (such as trauma, substance use, and brain injury) in sentence mitigation, *Thornell* can be seen as a glass-half-full, glass-half-empty situation.

On the one hand, some might be disappointed that seemingly new psychiatric evidence is not sufficient to sway an appellate court to grant a writ of *habeas corpus*. This comports with what has previously been written in this journal, “[w]hen reviewing ineffective assistance claims, federal courts of appeals seem willing to accept a low bar for mental health investigations” (Hiromoto L, Keltner C, Frizzell W, *et al.* PTSD and trauma as mitigating factors in sentencing in capital cases. *J Am Acad Psychiatry Law*. 2021 Nov; 50(1):22–33, p 28).

The lesson for forensic mental health experts and the defense bar is that they should maximize thoroughness and diligence during the trial and sentencing process. The result in *Thornell* supports the contention of some scholars that “it behooves capital defendants to research and present mitigation evidence of PTSD, trauma, and other mental illness at the trial stage. Appellate courts are much less likely to provide relief via *habeas corpus* after conviction and sentencing” (Hiromoto *et al.*, p 28).

That said, the glass-half-full interpretation is that the Supreme Court stood by its precedent regarding grossly deficient mitigation investigation. In its decision, the *Thornell* majority contrasted Mr. Jones’s case with those where it ruled in favor of the *habeas* petitioner. In those cases, “defense counsel introduced little, if any, mitigating evidence at the original sentencing” (*Thornell*, p 1314). In other words, the Court indicated that it would not rubber stamp sentences in cases where significant mental health evidence was ignored or not discovered.

In that sense, *Thornell* represents a continuation of the Supreme Court’s approach to ineffective assistance of counsel claims based on an alleged failure to present evidence related to mental health. *Habeas corpus* is only granted when the overlooked mental health concerns are significant and might have changed the outcome.

Prolonged Segregation of Those Incarcerated with Serious Mental Illness

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An Incarcerated Individual with Serious Mental Illness and Problematic Behaviors May Be Placed in Solitary Confinement-like Conditions for Extended Periods

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Key words: deliberate indifference; segregation; serious mental illness; restrictive conditions; liberty interest

In *Cartagena v. Lovell*, 103 F.4th 171 (4th Cir. 2024), the U.S. Court of Appeals for the Fourth Circuit affirmed the district court’s ruling to dismiss the claims of an incarcerated individual with serious mental illness who asserted that the conditions of his confinement in a specialized unit violated his First, Fourth, and Fourteenth Amendment rights, the Americans with Disabilities Act (ADA), and the Rehabilitation Act (RA). In a split decision, the majority ruled that Angel Cartagena failed to prove a claim.

Facts of the Case

Mr. Cartagena was incarcerated within the Virginia Department of Corrections (VDOC). In November 2019, he was moved to the Secure Diversionary Treatment Program (SDTP) at River North Correctional Center. The decision was made by a panel of prison officials, reasoning that he was “seriously mentally ill” and had “assaultive, disruptive, and/or unmanageable” (*Cartagena*, p 176) behaviors prohibiting him from functioning in the general prison population.

Mr. Cartagena was kept at SDTP for 18 months in the most restrictive unit. In his claim, Mr. Cartagena alleged that, among other limitations, individuals were held in their cells for 21 hours per day; were strip searched, placed in handcuffs, and attached to a “dog leash” when leaving their cell; and spent outside recreation time in segregation cages. Additionally, they were not permitted to attend religious services. VDOC officials noted that the program was designed for individuals with violent and difficult to manage behaviors and, by adhering to treatment programming, such individuals could receive increasing freedoms and integration into the prison population.

Throughout his time at SDTP, Mr. Cartagena filed multiple grievances with prison officials regarding the conditions of his confinement, complaining