

## Competence to Be Executed

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### State Court's Determination of Competence to Be Executed Was Consistent with Established Federal Law

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In *Dixon v. Shinn*, 33 F.4th 1050 (9th Cir. 2022), the U.S. Court of Appeals for the Ninth Circuit considered the appeal of an inmate in Arizona who was seeking a stay of his execution and whose federal *habeas* petition had been denied by the district court. The Ninth Circuit held that the Arizona state court's determination that the inmate was competent to be executed was not an unreasonable application of federal law or an unreasonable determination of the facts, and thus concluded that the inmate was not entitled to relief.

#### Facts of the Case

In 1977, Deana Bowdoin was found dead in her apartment after having been strangled and stabbed, with semen on her person and clothing. The crime remained unsolved until 2001, when DNA recovered from the scene was found to be a match for Clarence Wayne Dixon. In 1977, Mr. Dixon had been found not guilty by reason of insanity for assault with a deadly weapon in an unrelated case. In 1985, Mr. Dixon was convicted of aggravated assault, kidnapping, sexual abuse, and four counts of sexual assault in another unrelated case. He received consecutive life sentences for each count. Mr. Dixon's DNA was obtained in the preceding investigation.

In 2002, Mr. Dixon was charged in Ms. Bowdoin's homicide. During the trial, Mr. Dixon wished to mount a defense predicated on the notion that his DNA had been illegally obtained. Defense counsel disagreed with this strategy, and Mr. Dixon chose to

represent himself. At the time, Mr. Dixon denied having mental health conditions. In 2008, Mr. Dixon was convicted of premeditated murder and felony murder, and he was sentenced to death.

Mr. Dixon appealed to the Arizona Supreme Court, which affirmed the decision. The U.S. Supreme Court declined to review the decision. He also filed *habeas* petitions. The trial court rejected his assertion of ineffective assistance of counsel on the basis of failing to adequately address competence at the time of this trial, and the court specifically found that Mr. Dixon was rational, had cogent thoughts, and was able to adequately advance his positions.

Mr. Dixon's execution was scheduled for May 11, 2022. On April 8, 2022, he requested a hearing in Arizona state court regarding his competency to be executed. Expert witness testimony was presented, and the Arizona Superior Court ruled that Mr. Dixon had not proved that he was incompetent to be executed.

The Arizona Supreme Court declined to review the decision. On May 9, 2022, Mr. Dixon filed a federal *habeas* petition regarding the competency determination and a motion to stay his execution. The petition was denied by the district court and the Ninth Circuit granted a certificate of appealability.

#### Ruling and Reasoning

The Ninth Circuit based its reasoning for its decision on 28 U.S.C. § 2254 (2009), which stated that a federal *habeas* petition would not be granted unless the state court proceedings "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States" or "resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding."

The Ninth Circuit referred to *Madison v. Alabama*, 139 S. Ct. 718, 728 (2019), and held that the question regarding competency to be executed was "whether the prisoner can rationally understand the reasons for his death sentence." The Ninth Circuit held that the state court's determination that Mr. Dixon met this standard for competence was consistent with the requirements in 28 U.S.C. § 2254, affirmed the state court's decision, and denied Mr. Dixon's motion for a stay of execution.

The Ninth Circuit rejected Mr. Dixon's argument that the Arizona state court's decision that he was competent to be executed was an unreasonable application of established law. The court referenced prior case law. In *Ford v. Wainwright*, 477 U.S. 399 (1986), the Supreme Court held that the "Eighth Amendment prohibits the state from inflicting the penalty of death upon a prisoner who is insane" (*Ford*, p 410). In *Panetti v. Quarterman*, 551 U.S. 930 (2007), the Supreme Court held that insanity by this standard was determined by whether "mental illness deprives him of the mental capacity to understand that he is being executed as a punishment for a crime" (*Panetti*, p 954). The Ninth Circuit reviewed findings of the Arizona Supreme Court and determined that the state court had correctly applied the legal standard in determining whether Mr. Dixon had a "rational understanding" of the reason for his sentence.

The Ninth Circuit found that the Arizona Supreme Court had noted that Mr. Dixon had been diagnosed with schizophrenia, but found that his mental disorder alone did not render him incompetent for execution. The state court observed that Mr. Dixon had "high-average" intelligence and that his pleadings suggested "coherent and organized thinking." The state's expert witness, Dr. Carlos Vega, noted that Mr. Dixon had made the statement that "if he had a memory of the murder, he would have a sense of relief on his way to his execution" (*Dixon*, p 1055). The court interpreted this statement as evidence that Mr. Dixon understood that he had been sentenced to death as punishment for a crime. Dr. Vega did not find Mr. Dixon to be delusional and provided further evidence that he understood the reasons for his sentence, including statements by Mr. Dixon that he wished he lived in a state without the death penalty, that he did not want to die, and that he would bring the victim back to life if he could.

Mr. Dixon had also indicated to his expert, Dr. Lauro Amezcua-Patiño, that the state wanted to execute him for murder. Both experts agreed that Mr. Dixon knew why he was being executed but disagreed on the question of competence. Mr. Dixon also argued that the state court had not considered his delusion that his conviction was invalid because he believed the DNA evidence had been obtained improperly. The court rejected this argument citing the logic in *Madison* that not all delusions interfere with the required level of understanding.

The Ninth Circuit also rejected Mr. Dixon's claim that the state court's decision was based on an

unreasonable determination of the facts. Mr. Dixon argued that the state court was unreasonable in not accepting the conclusions of Dr. Amezcua-Patiño that he was incompetent. The Ninth Circuit held that it was not unreasonable for the state court to accept that Mr. Dixon had schizophrenia but retained a rational understanding of the reasons for his sentence. Mr. Dixon found fault with some aspects of Dr. Vega's assessment, including the interview's length, that it was not recorded, was conducted via video, and did not consider his neuropsychological test results. The court denied that these supposed flaws rendered the state court's conclusion that Mr. Dixon was competent to be unreasonable.

#### Discussion

The Ninth Circuit affirmed the state court's determination that Mr. Dixon was competent to be executed, and in doing so adhered to the precedent set in *Ford*, *Panetti*, and *Madison*. These cases are instructive for forensic psychiatrists. In *Ford*, the Supreme Court held that execution of an inmate who was insane violated the Eighth Amendment's ban on cruel and unusual punishment. In *Panetti*, the Court went further, distinguishing between mere awareness of the reasons for execution and rational understanding of those reasons. In *Madison*, the Court held that lack of memory of having committed the crime alone did not violate the standard set in *Ford* and *Panetti* unless that impairment also affected comprehension of the reasons for execution, and that the standard applied to dementia and other mental disorders other than psychotic delusions. The Ninth Circuit utilized the "rational understanding" test to affirm the state court's determination that Mr. Dixon was competent. The court's decision thus represents continuity with established case law.

The Ninth Circuit's decision also sheds light on what is deemed to be "reasonable" concerning acceptance of expert testimony. The landmark case of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), considered the admissibility of expert witness testimony in federal court. In that decision, the Supreme Court rejected the previous standard in *Frye v. U.S.*, 293 F. 1013 (D.C. Cir. 1923), that expert opinion must be based on a scientific technique that was "generally accepted," ruling that this was not a precondition in the Federal Rules of Evidence. Rule 702 governs testimony by expert witnesses, and states that such testimony must be "based on sufficient facts

or data” and be “the product of reliable principles and methods” (28 U.S.C. § 792 (2011)). It is noteworthy to forensic psychiatrists that the Ninth Circuit did not consider the state court’s acceptance of Dr. Vega’s testimony to be unreasonable despite Mr. Dixon’s objections. The Ninth Circuit’s decision suggests that video evaluations, even in capital cases, are likely to meet the requirements of Rule 702, which is significant given the potential for an increasing frequency of such evaluations since the COVID-19 pandemic.

## Insanity Partially Caused by Antisocial Personality Disorder

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### Defendant Not Required to Prove Insanity Stemmed Solely from a Qualifying Disorder

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In *State v. Meiser*, 506 P.3d 402 (Or. 2022), the Supreme Court of Oregon considered whether a defendant entering an insanity plea is required by state law to prove that his asserted insanity was caused exclusively by a qualifying mental disorder and not in any way by a co-occurring personality disorder. The defendant, Erik J. Meiser, argued that the state’s insanity statute did not require him to prove that his mental condition at the time of the crime was solely the result of schizophrenia and not at all the result of antisocial personality disorder. The state supreme court agreed, holding that such a requirement is contrary to the meaning of the state’s insanity statute.

#### Facts of the Case

In 2012, after breaking into a martial arts studio and stealing a samurai sword, Mr. Meiser entered a home with a plan to force its occupants to transfer

\$40,000 to him under the belief that this was “the only way to protect his children” (*Meiser*, p 403). When the homeowners attempted to escape, he struck one of them repeatedly in the head, killing that individual. Mr. Meiser was subsequently charged with aggravated murder and multiple felony counts of robbery and burglary.

After being found incompetent to stand trial several times, Mr. Meiser was eventually restored to fitness following almost four years of treatment at the Oregon State Hospital. He proceeded to a bench trial, and his plea to all charges was “guilty except for insanity,” which is Oregon’s affirmative insanity defense. Guilty except for insanity is a complete defense, equivalent to the not guilty by reason of insanity defense used by many states.

Oregon’s applicable legal standard is codified in Oregon Revised Statutes § 161.295 (2011): “A person is guilty except for insanity if, as a result of mental disease or defect at the time of engaging in criminal conduct, the person lacks substantial capacity either to appreciate the criminality of the conduct or to conform the conduct to the requirements of law.” The statute clarifies that “solely a personality disorder” does not constitute a qualifying “mental disease or defect.”

During Mr. Meiser’s trial, the defense called three psychiatrists and a psychologist as mental health experts. All testified that he met criteria for both schizophrenia and antisocial personality disorder. Two of the psychiatrists testified that he met Oregon’s insanity standard because his mental disorder impaired his ability to conform his conduct to the requirements of the law at the time of the charged offense. Both testified that “if not for the psychosis, defendant would not have committed the crimes” (*Meiser*, p 404). One expert elaborated that “both . . . conditions were ‘active’ at the time of the murder,” but schizophrenia was “the predominant driver of his behaviors” (*Meiser*, p 404).

The prosecution argued that Oregon’s insanity statute required Mr. Meiser to prove that schizophrenia was the sole cause of his inability to conform his conduct to the requirements of the law, without any contribution from antisocial personality disorder. The prosecution contended that, because Mr. Meiser’s actions during the offenses “were . . . influenced by his anti-social personality disorder,” he failed to meet the state’s insanity standard (*Meiser*, p 404).

The trial court found Mr. Meiser guilty of murder and one count of second-degree burglary, while