preferable that the testimony be given in purely medical or psychological terms” (Toolan, p 683). Ultimately, the court found that Dr. Kelly’s testimony was permissible, because he only briefly mentioned the legal definition and then reframed his answer on objection.

Second, Mr. Toolan asserted that the judge did not sufficiently explain the difference between a lack of criminal responsibility (based on mental disease or defect) and diminished capacity (based on mental impairment), and that the jury may have assumed that they cannot find that the defendant had a diminished capacity if he was criminally responsible. The court ruled that the judge’s instructions were adequate, as he presented the two concepts as two separate factors to consider. Further, in this case, the court found that the evidence regarding premeditation was so strong that any confusion was unlikely to lead to error.

Finally, Mr. Toolan contended that the jury should have been instructed to consider Mr. Toolan’s inability to resist the urge to use drugs and alcohol, even if he knew the effect it would have on his mental state. He argued that this further instruction should have been given when the jury received instruction that a defendant who voluntarily uses substances, knowing the effect it would have on an existing mental disease or defect, is still criminally responsible. In affirming the convictions, the court acknowledged that the science previously relied on no longer reflects the current understanding of addiction and how it may affect a person’s urges to use drugs or alcohol. The court determined, however, that Mr. Toolan’s conduct was knowing and intentional and, therefore, did not meet the criteria for insanity.

Discussion

Three key themes relevant to forensic practitioners emerge from Toolan. First, the importance of stating opinions in medical or psychological terms, rather than legal terms, is of primary concern. The fields of forensic psychology and psychiatry have long understood the importance of not intruding on the domain of the trier of fact. Attempts to bridge the gap between clinical practice and legal concepts, however, may lead to the conflation of terms. Although the court in Toolan was relatively forgiving of the Commonwealth’s expert who referred to the “statute,” the appeal itself demonstrates the importance of ensuring that practitioners testify using the nomenclature of their field (i.e., clinical terms) rather than legal lexes.

Second, practitioners should understand the importance of the distinction between criminal responsibility and diminished capacity. The Toolan case demonstrates the difficulty in differentiating the two concepts. Although this distinction may not be applicable to many practitioners who practice in states in which they are not asked to conduct evaluations of diminished capacity, forensic evaluators should be aware of this difficulty. Notably, there is no consensus among the field regarding evaluative procedures or across jurisdictions about the role of forensic practitioners. Evaluators asked to opine on diminished capacity should ensure that they are not conflating it with criminal responsibility.

Finally, Toolan highlights an ongoing concern that may prove to be at the forefront of changing ideas regarding volitional control in addiction. As science moves toward a disease model of addiction, rather than one of moral failing, society may move toward reducing culpability for those who commit crimes under the influence. Although the impact of substance use may already be considered in mitigation evaluations, most jurisdictions do not allow for its use in an insanity defense. If science continues to show the impaired capacity of a person experiencing addiction to not use, and society continues to understand widespread sociocultural influences affecting who is likely to use drugs, the time may come in which the legal system must adapt to changing views. To be best prepared for when courts may seek input from mental health practitioners and scientists in defining statutes, it is prudent for the field to consider its position on this matter and coalesce around professional standards of practice.

Mental Health as Mitigation Evidence

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Sentencing Judge Must Give Meaningful Consideration and Weight to Mitigation Evidence in Capital Punishment Proceedings

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In Allen v. Stephan, 42 F.4th 223 (4th Cir. 2022), the Fourth Circuit Court of Appeals ruled a sentencing judge in a capital punishment trial must give meaningful consideration and weight to mitigating evidence and may not ignore or overlook mitigating evidence.

Facts of the Case

In 2002, South Carolina sought the death penalty for Quincy Allen after he was indicted on seven charges, including capital offenses. During an ex parte meeting with the defense, the trial judge made statements suggestive of his willingness to sentence Mr. Allen to life should he plead guilty and depending on expert opinion presented. Mr. Allen did so and waived a jury trial.

During the penalty phase, the defense presented five expert witnesses, all of whom testified regarding Mr. Allen’s extensive history of childhood abuse and long-standing psychiatric disorders, including rumination disorder, schizophrenia, and antisocial personality disorder, and opined he was not malingering. The prosecution called expert witnesses in rebuttal, most of whom agreed Mr. Allen had antisocial personality disorder, and opined he was malingering symptoms of schizophrenia, but did not refute his diagnosis of rumination disorder. In closing, prosecution questioned the legitimacy of Mr. Allen’s schizophrenia and disregarded his rumination disorder. The defense then summarized Mr. Allen’s substantial childhood abuse and stated that, irrespective of symptom exaggeration, he was still mentally ill.

Despite his ex parte indications regarding a life sentence, the judge sentenced Mr. Allen to death. In the oral sentencing order, the judge stated that he considered Mr. Allen’s childhood abuse and history of mental illness but was unconvinced he was experiencing major mental illness such that it diminished his culpability or that a death sentence would result in no retributive or deterrent effect. In the judge’s postsentencing report, he marked “yes” to the question, “were character or behavior disorders found?” (Allen, p 243), and elaborated by writing “schizophrenia” but nothing else. The trial judge also replied “no” to the question, “Was there evidence of mitigating circumstances found supported by the evidence?” (Allen, p 243). But, he also marked an “X” next to “influence of mental or emotional disturbance,” “capacity . . . to appreciate the criminality of his conduct or to conform his conduct to the requirements of law,” and “age or mentality . . . at the time of the crime(s)” and further noted, “Conclusive proof of mitigating circumstances was not found,” evidenced by conflicting diagnoses given to Mr. Allen (Allen, p 243). In a postsentencing affidavit, the sentencing judge also wrote, “Mr. Allen was NOT conclusively diagnosed to be mentally ill” (Allen, p 243, emphasis in original).

Mr. Allen first directly appealed to the Supreme Court of South Carolina, who upheld his conviction and sentence, and then was denied certiorari by the U.S. Supreme Court. He filed for postconviction relief in county court but was denied. Later, the Supreme Court of South Carolina denied Mr. Allen’s amended petition for writ of certiorari. Mr. Allen then filed a petition for writ of habeas corpus in the U.S. District Court for the District of South Carolina, and asserted his rights under the Sixth, Eighth, and Fourteenth Amendments were violated because the trial judge failed to find any mitigating circumstance had been established. The court dismissed the petition on the basis that the “Constitution does not request a capital sentence to find the existence of a mitigating factor, only to consider all of the evidence offered in mitigation” (Allen, p 262) and the judge considered evidence of child abuse and mental illness in his decision. Mr. Allen then appealed to the Fourth Circuit Court of Appeals, who granted a hearing, and applied the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) standard of review, under which petitioners are entitled to relief if the state court’s adjudication of their claim was either “contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court,” or “based on an unreasonable determination of the facts in light of the evidence presented” (Allen, p 246). If there is error under AEDPA, habeas relief is only granted if the error had substantial or injurious effect or influence on the fact finder’s decision, or if the reviewing court has grave doubt as to whether the error was harmless.
Ruling and Reasoning

The Fourth Circuit Court of Appeals began by reviewing the Eighth Amendment’s ban on arbitrary imposition of the death penalty, and that capital punishment jurisprudence requires a consideration of the character, records, and background of the accused, as well as the circumstances of the offense. The court clarified that a defendant must be allowed to present mitigating evidence, while the determination of “relevance” is broad: “Relevant mitigating evidence is evidence which tends logically to prove or disprove some fact or circumstance which a fact finder could reasonably deem to have mitigating value” (McKay v. North Carolina, 494 U.S. 433 (1990), p 440). By this definition of relevance, the evidence may not relate directly to one’s culpability but may still have value as mitigating evidence that serves “as a basis for a sentence less than death” (Allen, p 248, citing Tennard v. Dretke, 542 U.S. 274 (2004), p 285). According to the court, once the threshold for relevance is met, the decision maker must then weigh both the aggravating and mitigating evidence to determine whether a sentence of death is morally rational and justifiable.

With respect to application of Mr. Allen’s case, the court stated that “mere ‘consideration’ of mitigating evidence...is not enough to satisfy the Eighth Amendment’s dictates. Sentencers must be able to give meaningful consideration and effect to all mitigating evidence” (Allen, p 248, emphasis in original), and although sentencers are permitted to determine the amount of weight given to mitigating evidence, they are not permitted to give such evidence no weight by excluding it from consideration. Thereby, the trial court made a decision that was an unreasonable application of clearly established federal law by not considering all mitigating evidence. For the judge to conclude that Mr. Allen did not conclusively have a mental disorder, the judge excluded the uncontested mitigating evidence: “At bottom, the sentencing judge could not have considered mitigating factors that the sentencing judge swore did not exist” (Allen, p 250). By only listing “schizophrenia,” the ruling suggests that the sentencing judge did not consider the other uncontested disorders when making a sentencing determination. In conclusion, the court reasoned, “A sentencer can assign little to no weight to [mitigating] evidence if the sentencer finds it wanting; but a sentencer may not give it no weight by ignoring or overlooking it” (Allen, p 257).

Dissent

Justice Rushing delivered the dissenting opinion, stating that a federal habeas court cannot assert that a state court was unreasonable in its determination simply because it would have reached a different conclusion. The dissent found that the majority erred in overriding the state court in granting relief because “fairoind [sic] jurists could agree” with the lower court’s decision (Allen, p 263). The dissent refuted the majority’s conclusion that the sentencing judge excluded mitigating evidence, arguing that the sentencing judge simply found the mitigating evidence to be unpersuasive.

Discussion

In Allen, the court was conclusive in its finding that the sentencing judge did not adequately consider all mitigating evidence in deciding to sentence Mr. Allen to death. The finding illustrates that although sentencing judges have discretion as to the degree of weight assigned to mitigating evidence, they are barred from excluding this evidence or assigning no weight to it.

The principles identified in Furman v. Georgia, 408 U.S. 238 (1972), a landmark case on the application of the death penalty, are intended to act as a safeguard from the arbitrary imposition of the death penalty by requiring consideration of mitigating evidence.

The Allen case takes safeguards one step further by defining what proper consideration means. The dissenting opinion noted that the sentencing judge likely had considered the mitigating evidence but found it wanting; but, in light of the majority’s ruling, any similar circumstances would require clear and deliberate identification as to how all of the mitigating evidence was considered. This opinion underscores that forensic evaluators should apply due diligence in exploring all potentially mitigating evidence when asked to conduct such an evaluation. It is ultimately up to the sentencing judge to assign appropriate weight to such evidence, but forensic mental health experts can assist judges in their proper consideration by providing clear and concise clinical data on all potentially mitigating circumstances, leaving it to the sentencing judge to decide on the relevance of the data.