

## Mental Illness and Post-Conviction Relief

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### Mental Illness as Permissible Grounds for Delayed Filing of a Federal Habeas Petition

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In *Justus v. Clarke*, 78 F. 4th 97 (4th Cir. 2023), an incarcerated individual with mental illness appealed denial of his petition for habeas relief because of untimeliness, arguing his mental health symptoms precluded him from effectuating an appeal of his underlying criminal charges within the statute of limitations. The Fourth Circuit Court of Appeals held that Mr. Justus was entitled to an evidentiary hearing concerning whether his psychiatric disabilities qualified as “extraordinary circumstances” that warranted relief from the dismissal and equitable tolling (extension of the statute of limitations) given the existing evidence of his chronic mental illness.

#### Facts of the Case

Berman Justus Jr. was charged with capital murder, first-degree murder, and multiple firearm-related offenses secondary to an incident where he shot and killed his estranged wife and her boyfriend in November 2003. Over the next three years, he was twice found incompetent to stand trial and hospitalized for competency restoration, receiving diagnoses that included schizoaffective disorder and bipolar disorder, most recent episode mixed, with psychosis. Mr. Justus presented an insanity defense during his bench trial, arguing that he believed he was acting at the command of God when he committed the homicides. Two expert witnesses also testified regarding his

mental state at the time of the offenses, but neither opined that Mr. Justus had been insane. One expert testified that he developed psychosis after the murders, and the other was unable to form an opinion but recognized there were signs of psychosis at the time. Ultimately, in January 2007, the trial court rejected Mr. Justus’s insanity defense and found him guilty of the alleged offenses. He was sentenced to two terms of life in prison plus 18 years, with the court identifying his serious mental illness and the absence of any violent or criminal history as reasons to not impose the death penalty.

After his conviction, Mr. Justus participated in some psychiatric services during his incarceration, with records indicating he received mental health treatment from the Department of Corrections between May 2007 and August 2008 as well as between April and August 2016. His adherence with treatment was variable, and Mr. Justus reportedly experienced hypervigilance, depression, and symptoms of psychosis. Professionals who worked with him at different points in his incarceration, such as his attorney and a prison advocate, also attested to difficulties communicating with Mr. Justus due to interference from mental health symptoms.

Mr. Justus initially appealed the rejection of his insanity defense in the state appeals court. This appeal was denied; the court of appeals cited evidence of reality-based motivations for committing the offenses. The court, however, did not examine Mr. Justus’s trial testimony regarding his mental health symptoms as part of the ruling, given that a relevant, 18-page section of the transcript was missing from the court file. A subsequent appeal to the Supreme Court of Virginia was not filed because of an oversight at the office of Mr. Justus’s attorney, and a letter communicating these developments to Mr. Justus was lost in transit. He then pursued additional legal action *pro se* over the next several years, including filing two bar complaints against his attorney in 2010 and 2012 (which were dismissed) and two additional state habeas petitions that were also dismissed as untimely. On September 24, 2013, Mr. Justus sought additional recourse in federal court by filing a *pro se* petition for habeas relief under 28 U.S.C. § 2254 (2013), which alleged ineffective assistance of counsel. When the federal district court asked for argument explaining the delayed filing of this petition, Mr. Justus “responded to the order but did not address the court’s timeliness concern” (*Justus*, p 103). The petition was subsequently dismissed because it had exceeded the one-year statute of

limitations for federal *habeas* petitions established in the Antiterrorism and Effective Death Penalty Act of 1996, even when accounting for pauses during periods where his state-level actions were pending.

In August 2019, Mr. Justus moved that the federal district court reconsider the dismissal of his 2013 petition pursuant to Federal Rule of Civil Procedure 60(b) (2007), which allows for relief from judgment in limited circumstances. He argued his mental health disabilities prevented him from effectively petitioning the court, leading to the delay in his filing. This motion was denied by the district court, which ruled Mr. Justus had not sufficiently established the presence of “extraordinary circumstances” required for the requested relief (*Justus*, p104). Mr. Justus appealed to the Fourth Circuit, which decided to accept and hear his appeal. Overall, the key problem presented to the court was whether Mr. Justus’s mental health symptoms may have qualified as extraordinary circumstances that permitted equitable tolling under a catch-all provision of the Federal Rule of Civil Procedure 60(b).

#### Ruling and Reasoning

The Fourth Circuit reversed the ruling of the district court and remanded the case for further proceedings, holding that Mr. Justus was entitled to an evidentiary hearing to determine whether his mental illness during the period of his post-conviction filings “constitute[d] an ‘extraordinary circumstance’ that justify[d] relief under Rule 60(b)(6) and entitle[d] him to equitable tolling of the statute of limitations governing his habeas petition” (*Justus*, p 117). Equitable tolling with *habeas* petitions requires a petitioner to demonstrate diligent pursuit of rights, as well as that “some extraordinary circumstance stood in his way and prevented timely filing” (*Justus*, p 105; citing *Holland v. Florida*, 560 U.S. 631 (2010), p 649). After determining that Mr. Justus’s motion for relief was appropriately classified under the catch-all provision of Rule 60(b)(6), “any other reason that justifies relief,” the court next examined the appropriate standard for mental illness to serve as an “extraordinary circumstance,” both for Rule 60(b)(6) and equitable tolling purposes (*Justus*, p 111; citing *Smith v. Johnson*, WL 43520 (5th Cir. 2001), p 3). This situation was previously established by the Fourth Circuit to occur in cases of “profound mental incapacity” (*United States v. Sosa*, 364 F.3d 507 (4th Cir. 2004)). Although the court had not defined this concept, it identified example indicia of incapacity

described in other proceedings, such as “institutionalization or adjudged mental incompetence” (*Grant v. McDonnell Douglas Corp*, 163 F.3d 1136 (9th Cir. 1998), p 1138). The court also referenced a prior holding of the Ninth Circuit, which had reasoned that “the ‘extraordinary circumstances’ test for equitable tolling is met either where the petitioner cannot ‘rationally or factually. . . understand the need to timely file’ or where his ‘mental state render[s] him unable. . . to prepare a habeas petition and effectuate its filing’” (*Justus*, p 114; citing *Bills v. Clark*, 628 F.3d 1092 (9th Cir. 2010), p 1099–1100).

Using these considerations, the Fourth Circuit reasoned there were multiple indications that Mr. Justus’s mental illness may have impaired his capacity during the period of his post-conviction petitions. These included the chronic nature of his illness, recognition of his condition by the trial court despite the rejection of his insanity defense, his prior findings of incompetency, and information from his medical records that “when unmedicated, Justus’s functioning deteriorates and he experiences depression and psychotic symptoms” (*Justus*, p 115). Additionally, the Fourth Circuit referenced the psychological literature to highlight how Mr. Justus’s periods of noncompliance with treatment may be characteristic of his chronic mental illness (citing Applebaum PS. Reference guide on mental health evidence. In Federal Judicial Center. *Reference Manual on Scientific Evidence*, Third Edition. Washington, DC: National Academies Press; 2011. p 858), ultimately determining that existing evidence of his mental illness was sufficient to at least require exploration through an evidentiary hearing.

#### Dissent

The dissenting opinion primarily argued Mr. Justus’s repeated pursuit of *pro se* legal action during the time in question precluded his argument that he was too impaired to file his appeal, at least in that the dismissal of his action was reasonable. Although the dissent recognized the presence of Mr. Justus’s mental condition, it highlighted how “the severity of his disorder varied” (*Justus*, p 120), and the available evidence was not indicative of a lack of capacity.

#### Discussion

In *Justus v. Clark*, the Fourth Circuit grappled with how mental illness may affect the exercise of constitutional rights well after the conclusion of a criminal trial. This case highlights how an individual’s capacity

to participate in judicial proceedings is fluid, with the court weighing the available information in light of psychological literature. This approach allowed the court to respond to Mr. Justus's efforts in a flexible manner consistent with established law, permitting Mr. Justus to pursue due process given the complicated nature of his post-conviction efforts and experiences of pitfalls outside of his control.

Additionally, this case illustrates the level of mental health impairment courts might consider relevant to one's ability to file *habeas* petitions. This example may assist practitioners and researchers to further operationalize such capacities in a manner that can be informative for legal decision-makers. Overall, this also serves to highlight psychological science as an effective source of data for courts to incorporate when considering a *pro se* defendant's ability to pursue postjudgment relief.

## Suicide Risk Under the Bail Reform Act

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### Under the Bail Reform Act, Risk of Suicidality Alone Is an Insufficient Basis to Order a Defendant's Pretrial Detention

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**Key words:** Bail Reform Act; suicide risk; pretrial release

In *United States v. Storme*, 83 F.4th 1078 (7th Cir. 2023), the U.S. Court of Appeals for the Seventh Circuit affirmed the revocation of the defendant's pretrial release, finding that his suicidality coupled with his elevated risk of harm toward others in the community justified his pretrial detention. The court further held that risk of suicidality alone is an insufficient basis for pretrial detention.

#### Facts of the Case

In September 2020, Vincent Storme was arrested on multiple counts of cyberstalking and unauthorized

intrusion into a cellphone against three different women. His underlying conduct allegedly included extreme online harassment with obsessive accusations against the victims and occasional physical stalking. At his arraignment, the magistrate judge released him on bond to the custody of his mother with conditions, including a curfew, psychiatric treatment, and restricted use of technology. The next day, he attempted suicide by overdose. Over the next several months, his behavior became increasingly erratic as he repeatedly violated curfew (usually by mere minutes), and in February 2021, he was arrested for allegedly stalking a fourth woman. Further, he began abusing alcohol and continued to express suicidal ideation. The district court ordered drug testing and prohibited him from contacting the victims but did not revoke his release. Then, his mother moved out of state and the district court did not appoint him a new custodian.

In July 2023, Mr. Storme's therapist expressed concern regarding his elevated risk of suicide, specifically stating he thought Mr. Storme would kill himself if he thought the district court might deny his motion to dismiss the indictment. Further, Mr. Storme exhibited concerning behaviors, such as transferring his assets to his mother and refusing to form a safety plan with his therapist. Notably, he began to watch unrelated court proceedings before his assigned judge in the district court, stating this was his attempt to predict the judge's ruling patterns.

On August 3, 2023, the district court heard argument on Mr. Storme's motion to dismiss but reserved ruling. Then, without notice, explanation, or findings, the court revoked Mr. Storme's pretrial release and ordered him detained, indicating findings would be forthcoming in a written order. In response, after leaving the courtroom and returning to his holding cell, he exhibited increased suicidality such that he urged the U.S. Marshalls to kill him, banged his head on the floor, and attempted to hang himself.

Mr. Storme's counsel sought immediate review from the court, which ordered his release within 24 hours unless the government filed the appropriate motion to revoke release, and the government promptly complied. On August 9, 2023, after a formal hearing, the district court allowed the motion to revoke Mr. Storme's release, finding probable cause that he both committed crimes and violated his conditions of release. The district court held that suicide was a form of flight under the Bail Reform Act and Mr. Storme's erratic behavior made him a risk to others