

17-7505 MADISON V. ALABAMA

DECISION BELOW: cc-1985-001385.80

LOWER COURT CASE NUMBER: CC-1985-001385.80

QUESTION PRESENTED:

On January 25, 2018, the State seeks for the second time to execute Vernon Madison, a 67-year-old man who has been on Alabama's death row for over 30 years. Mr. Madison suffers from vascular dementia as a result of multiple serious strokes in the last two years, and no longer has a memory of the commission of the crime for which he is to be executed. His mind and body are failing: he suffers from encephalomalacia (dead brain tissue), small vessel ischemia, speaks in a dysarthric or slurred manner, is legally blind, can no longer walk independently, and has urinary incontinence as a consequence of damage to his brain.

The first time Mr. Madison was scheduled to be executed by the State of Alabama, in May, 2016, he challenged his competency in the state circuit court pursuant to the Alabama statute governing competency-to-be-executed claims. After the circuit court denied his claim, Alabama law prohibited any appeal in state court, and Mr. Madison challenged his claim in federal court. In granting habeas corpus relief, the Eleventh Circuit majority found that the evidence undisputably established that Mr. Madison had no memory of the offense, and all three judges, including the dissenting judge, agreed that he was incompetent to be executed.¹

This Court reversed the Eleventh Circuit's grant of habeas corpus relief and explicitly declined to address the "merits of the underlying question outside of the AEDPA context," *Dunn v. Madison*, 138 S. Ct. 9, 12 (2017), as that question was not "[a]ppropriately presented." *Id.* (Ginsburg, J., concurring).

With this Court's opinion in hand, the State sought an expedited execution date, and Mr. Madison's execution was scheduled for January 25, 2018. Mr. Madison once again petitioned the Mobile County Circuit Court for relief under the same statutory provision, this time with new evidence that the court-appointed expert, Dr. Karl Kirkland, whose report the circuit court and this Court had previously relied on in denying Mr. Madison's claim, had been suspended from the practice of psychology after his narcotics addiction led him to forge prescriptions for illegal pills (including one incident occurring just 4 days after Mr. Madison's 2016 competency hearing) and eventually into drug rehab. Though the State never disclosed these facts to any court- the circuit court, the Alabama Supreme Court² or this Court - while at the same time arguing for reliance on Dr. Kirkland to deny Mr. Madison's claim, the circuit court again denied relief after a brief hearing and finding that Mr. Madison was competent to be executed. See Appendix A.

With no available appeal in the Alabama state courts, Mr. Madison is again before this Court, this time "outside of the AEDPA context," requesting that his execution be stayed and certiorari be granted to address the following two substantial questions:

1. Consistent with the Eighth Amendment, and this Court's decisions in *Ford* and *Panetti*, may the State execute a prisoner whose mental disability leaves him without memory of his commission of the capital offense? See *Dunn v. Madison*, 138 S. Ct. 9, 12 (Nov. 6, 2017) (Ginsburg, J., with Breyer, J., and Sotomayor, J., concurring).

2. Do evolving standards of decency and the Eighth Amendment's prohibition of cruel

and unusual punishment bar the execution of a prisoner whose competency has been compromised by vascular dementia and multiple strokes causing severe cognitive dysfunction and a degenerative medical condition which prevents him from remembering the crime for which he was convicted or understanding the circumstances of his scheduled execution?

1. See *Madison v. Comm’r, Ala. Dep’t Of Corr.*, 851F.3d 1173, 1190 (11th Cir. 2017) ("We therefore conclude that Mr. Madison is incompetent to be executed."); *id.* (Jordan, J., dissenting) ("I believe that Vernon Madison is currently incompetent. I therefore do not think that Alabama can, consistent with the Constitution, execute him . . .").

2. See, e.g. *State of Alabama's Expedited Motion to Set an Execution Date at 2, Ex parte Madison (In re Madison v. State)*, No. 1961635 (Ala. Nov. 8, 2017). ("there are no further impediments to the execution of Madison's lawful sentence").

CERT. GRANTED 2/26/2018