THIS IS A CAPITAL CASE

EXECUTION SET FOR
December 18, 2024 (from 12:01 am until Sunrise)

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

TAHINA CORCORAN, next friend for JOSEPH E. CORCORAN, Petitioner,

v.

RON NEAL,

Warden, Indiana State Prison, Respondent.

On Petition for Writ of Certiorari
to the United States Court of Appeals for the Seventh Circuit

---

APPENDIX

LAURENCE E. KOMP, MO Bar #40446
FAITH J. TAN, IL Bar #6342729
MICHELLE M. LAW, MO Bar #45487
Federal Public Defender
Western District of Missouri
1000 Walnut Street, Suite 600
Kansas City, MO 64106
816-675-0923
Laurence_Komp@fd.org
Faith_Tan@fd.org
Michelle_Law@fd.org

Attorneys for Petitioner-Appellant

APPENDIX INDEX

In the
Indiana Supreme Court

Joseph E. Corcoran,
Petitioner,

v.

State of Indiana,
Respondent.

Supreme Court Case Nos.
02S00-0508-PD-350
24S-SD-222

Trial Court Case No.
02D04-9707-CF-465

Published Order

On November 15, 2024, counsel for Joseph E. Corcoran filed two "Motion[s] for Stay of Execution" and two petitions seeking permission from this Court to litigate on successive post-conviction review: (1) whether Corcoran's execution would violate the Eighth and Fourteenth Amendments to the United States Constitution or Article One, Section 16 of the Indiana Constitution; and (2) whether he is currently competent to be executed pursuant to *Panetti v. Quarterman*, 551 U.S. 930 (2007) and *Ford v. Wainwright*, 477 U.S. 399 (1986). On November 26, 2024, the State filed a response in opposition to all of the motions and petitions filed by Corcoran's counsel. On December 3, 2024, the Court received an Affidavit from Corcoran, postmarked November 22, 2024. That same day, Corcoran's counsel filed a Reply in Support of Motions to Stay and Motions for Permission to File Successive Petitions for Post-Conviction Relief.

Having considered the matter before us, the "Motion[s] for Stay of Execution" and the petitions seeking permission to litigate successive post-conviction relief claims are DENIED. The Court will promptly issue a written opinion explaining its reasons.

Done at Indianapolis, Indiana, on 12/5/2024.

Loretta H. Rush
Chief Justice of Indiana

Massa, Slaughter, and Molter, JJ., concur.
Rush, C.J., and Goff, J., dissent.

IN THE

Indiana Supreme Court

Supreme Court Case Nos. 24S-SD-222, 02S00-0508-PD-350

Joseph E. Corcoran,
Petitioner,

–v–

State of Indiana,
Respondent.

Decided: December 10, 2024

On Successive Petitions for Post-Conviction Relief
and Motions to Stay in a Capital Case

Direct Appeal from the Allen Superior Court,
Case No. 02D04-9707-CF-465

Opinion by Justice Molter

Justices Massa and Slaughter concur.
Justice Goff dissents with separate opinion in which Chief Justice Rush joins.

Molter, Justice.

A quarter century ago, an Allen County jury convicted Joseph Corcoran of a quadruple murder, and the judge sentenced him to death as the jury recommended. Since then, courts at every level of the state and federal judiciary have been litigating whether the state and federal constitutions prohibit Indiana from executing him. That litigation has included multiple decisions from courts of last resort—five opinions from our Court and two opinions from the United States Supreme Court. After both judiciaries resolved all the issues before them, we set an execution date of December 18, 2024.

At this point, Corcoran doesn't want to petition the courts to challenge his execution. He recently wrote to us: "I am guilty of the crime I was convicted of, and accept the findings of all the appellate courts." Affidavit at 2. He says "[t]he long drawn out appeal history has addressed all the issues [he] wished to appeal, such as the issue of competency." *Id.* And, therefore, he does "not wish to proceed with more and/or endless litigation." *Id.* He confirms that he understands he "will then be put to death for the heinous crime [he] committed," and that his execution "serves as both a punishment and a deterrent." *Id.*

Contrary to Corcoran's wishes, the State Public Defender filed two motions for permission to file two separate successive petitions for post-conviction relief and two accompanying motions to stay the execution while those petitions are litigated. Those submissions argue that Corcoran's mental illness precludes his execution. But we can only disregard Corcoran's decision to waive post-conviction remedies if he isn't competent to make that decision, and our Court previously concluded that he is. The State Public Defender again questions Corcoran's competency to waive post-conviction remedies, but she relies on the same evidence we considered the last time, and the minimal new evidence she identifies is offered only to confirm that Corcoran's condition is unchanged. Since Corcoran does not authorize the successive petitions on his behalf, we cannot authorize them either.

Even setting aside the fact that Corcoran has not authorized the requests for successive petitions, we still must deny the motions because

there is no reasonable possibility that Corcoran is entitled to relief. The State Public Defender has standing only to challenge Corcoran's competency to waive post-conviction remedies, and the remaining claims in the first petition are procedurally defaulted anyway. The second petition argues that Corcoran is not competent to be executed because he does not have a rational understanding of why the State will execute him. But we previously concluded he does; ample evidence, including his recent affidavit, further illustrates that; and the State Public Defender has not made the threshold substantial showing that anything has changed.

We therefore agree with the State that we must deny all four of the State Public Defender's motions.

Facts and Procedural History

I. Prior State Court Proceedings

A. Corcoran's Direct Appeal

Just over twenty-five years ago, an Allen County jury convicted Joseph Corcoran of four murders. He had been "under stress because his sister's upcoming marriage would necessitate his moving out of her house," and "his brother said Corcoran could not move in with him." *Corcoran v. State*, 774 N.E.2d 495, 497 (Ind. 2002). When he "awoke one afternoon to hear his brother and others downstairs talking about him," "he loaded his rifle and went downstairs to intimidate them, but as Corcoran said later, 'It just didn't happen that way.'" *Id.* Instead, "Corcoran killed his brother, his sister's fiancé, and two other men in the ensuing incident." *Id.*

That same jury also recommended that Corcoran be sentenced to death for the four murders, and the trial judge imposed that sentence. When imposing the sentence, "the trial judge thoughtfully considered the nine mitigating circumstances asserted by the defendant," agreeing with many, including that "the defendant was under the influence of a mental or emotional disturbance at the time the murders were committed." *Corcoran*

v. State, 739 N.E.2d 649, 656 (Ind. 2000). But the judge gave each of the mitigating factors "medium or low weight," and she believed the aggravating circumstances—multiple murders—outweighed the mitigating circumstances. *Id.*

Corcoran didn't appeal his conviction, but he appealed his sentence, raising eight claims: four independent arguments that Indiana's death penalty statute violated the state and federal constitutions; an argument that the prosecutor committed misconduct in the penalty phase closing argument; an argument that the death penalty statute was ambiguous and had to be construed against the State; an argument that the judge improperly considered a non-statutory aggravator when sentencing; and an argument that the death sentence in this case is manifestly unreasonable. *Id.* at 651.

Our Court considered those arguments and unanimously rejected all but one; we agreed with Corcoran that the judge may have considered non-statutory factors when imposing a death sentence because she noted his future dangerousness to the community, the innocence of the victims, and the heinousness of the crime. *Id.* at 657. We remanded for resentencing based on the evidence already presented. *Id.* Chief Justice Shepard concurred with a separate opinion explaining that he agreed with the remand "largely because meticulous attention to capital cases at an early stage saves a good deal of effort later on." *Id.* at 658 (Shepard, C.J., concurring). He read the trial judge's sentencing statement as simply elaborating on the statutory factor for committing multiple murders, and he would have been willing to affirm on that basis. *Id.* But he nevertheless agreed it was "worth clarifying now that only statutory aggravating circumstances are being considered." *Id.*

On remand, the trial court reimposed the death sentence after again assigning "medium weight" to "the mitigating circumstance that [Corcoran] was under the influence of a mental or emotional disturbance at the time the murders were committed." *State v. Corcoran*, No. 02D04-9707-CF-465, 2001 WL 36099910 (Allen Superior Ct. Sept. 30, 2001). It based that conclusion on the opinions of court-appointed experts "that the Defendant suffered from a personality disorder, either paranoid

personality disorder, or schizotypal personality disorder." *Id.* Corcoran again appealed, and our Court affirmed in a 4-1 decision. *Corcoran*, 774 N.E.2d at 499. The majority rejected Corcoran's arguments that the trial judge again considered non-statutory aggravators, that the judge failed to consider all proffered mitigators, and that the sentence was manifestly unreasonable. *Id.* at 499, 500, 502.

As for the reasonableness of the sentence, Corcoran "argue[d] vehemently that his mental health should be of utmost significance in determining his sentence." *Id.* at 501. Our Court acknowledged that "[s]even qualified doctors analyzed Corcoran, and while they offered varying opinions," it seemed "the consensus was that Corcoran suffered from schizotypal or paranoid personality disorder." *Id.* (citations omitted). But after carefully reviewing the evidence, our Court was "satisfied that the trial court's decision that a quadruple killing was weightier than the proffered mitigation of Corcoran's mental health led the trial court to an appropriate sentence." *Id.* at 502.

Justice Rucker dissented because, like the attorneys arguing before us now, he did not "believe a sentence of death is appropriate for a person suffering a severe mental illness." *Id.* (Rucker, J., dissenting). As the attorneys now argue again, he thought the Eighth Amendment's ban on "cruel and unusual" punishment forecloses executing mentally ill prisoners like Corcoran for the same reasons the United States Supreme Court has said the Eighth Amendment prohibits executing the intellectually disabled. Even if the federal constitution didn't prohibit Corcoran's execution, he concluded—like the attorneys here argue—that Indiana's Constitution did. *Id.* at 503 ("Because Indiana's constitution affords even greater protection than its federal counterpart, I would hold that a seriously mentally ill person is not among those most deserving to be put to death. To do so in my view violates the Cruel and Unusual Punishment provision of the Indiana Constitution."). Corcoran requested rehearing, but we denied that request.

B. State Court Proceedings to Determine Corcoran's Competency to Waive Post-Conviction Remedies

Our rules permitted Corcoran to again challenge his sentence through procedures for post-conviction remedies, but he elected not to. *Corcoran v. State*, 820 N.E.2d 655, 656 (Ind. 2005), *aff'd on reh'g*, 827 N.E.2d 542 (Ind. 2005). However, the State Public Defender believed Corcoran was incompetent to make that decision given his mental illness, so she requested competency proceedings. *Id.* at 657. The trial court held a hearing, and the State Public Defender offered "the testimony of three mental health experts, each of whom concluded that Corcoran suffers from paranoid schizophrenia." *Id.* at 660 (footnote omitted).

They all said that symptomatic of Corcoran's condition was that he had "recurrent delusions that Department of Correction prison guards are torturing him through the use of an ultrasound machine, causing him substantial pain and uncontrollable twitching." *Id.* Based on their diagnosis, "all three experts concluded Corcoran was unable to make a rational decision concerning the legal proceedings confronting him." *Id.* They thought "Corcoran's decision to forgo post-conviction review of his sentence, thereby hastening his execution, was premised on his desire to be relieved of the pain that he believes he experiences as a result of his delusions." *Id.* In essence, they reasoned that "Corcoran's decision to forgo post-conviction review cannot be rational if based upon his delusions, which are irrational." *Id.*

As in the affidavit Corcoran recently submitted to our Court, in those earlier proceedings he "spoke directly to his reasons for not pursuing post-conviction review and the contention that his delusions were prompting his actions." *Id.* Just as he says now, he said then:

> See, I want to waive my appeals because I am guilty of murder. I think that I should be executed for what I have done and not because I am supposedly tortured with ultrasound or whatever. I am guilty of murder. I should be executed. That is all there is to it. That is what I believe. I believe the death penalty is a just punishment for four counts of murder, and I

> believe that I should be executed since I am guilty of four counts of murder.

Id. Dr. George Parker, after evaluating Corcoran for the competency hearing, explained:

> He has a very clear awareness of the status of his case. He is aware he has been sentenced to death. He is aware that he is in the appeals process. He has a good memory of the events that have taken place from the time of the offense to the trial, to the sentencing phase, and then through the more extensive appeals phase. He is aware of the attorneys' positions and how, how the attorneys have changed over the course of the trial and then [the] appeals process. So, he has a good understanding of what is at issue.

Id. at 661.

That was consistent with Dr. Robert Kaplan's testimony, after evaluating Corcoran, "that Corcoran was aware that by not continuing with post-conviction review that he would be executed." *Id.* Both the State's attorney and the presiding judge questioned Corcoran further and confirmed his understanding of the legal proceedings and his legal position. *Id.* That included the judge questioning "Corcoran with respect to the entire history of his case," and Corcoran's answers reflecting that "he was aware that he had been convicted of four capital crimes"; that "he understood the purpose of his initial direct appeal to the Indiana Supreme Court to review his death sentence and that his appeal had been unsuccessful"; and that the post-conviction proceedings were his "last attempt to review [the] case." *Id.* He confirmed that he had court-appointed counsel whose judgment he trusted with one exception; he disagreed with them challenging his competency to waive post-conviction review. *Id.* at 662.

After an extensive review of the record, our Court concluded that "[b]oth the State's and post-conviction judge's questioning of Corcoran reaffirm the testimony of Dr. Parker that Corcoran was able to appreciate

the gravity of his legal position and the consequences of his choice to waive further post-conviction review." *Id.* And other portions of the record were "also sufficient evidence to support the post-conviction court's determination that Corcoran made his choice knowingly, voluntarily, and intelligently." *Id.* We explained:

> Corcoran's explicit denial that his delusions prompted him to waive his right to post-conviction review and his reasoning that his death sentence is commensurate with the crime he committed (the conclusion to which both the original trial court jury and judge came), makes it impossible for this Court to conclude that the evidence is without conflict and leads only to a conclusion contrary to the result of the post-conviction court.

Id. at 661 (brackets and quotations omitted).

The State Public Defender also raised two additional claims: (1) "the Constitution and the Indiana death penalty statute required this Court's review of issues regarding Corcoran's convictions even though he affirmatively waived such review"; and (2) "it would be unconstitutional to execute a severely mentally ill person, such as Corcoran." *Id.* at 662 (quotations omitted). We rejected those claims because Corcoran did not authorize the State Public Defender to make them, "and without his authority, neither the trial court in this proceeding nor this Court has jurisdiction to review claims for post-conviction relief." *Id.* at 663. We noted our acknowledgment and appreciation "that the State Public Defender raises these claims in the sincere belief that Corcoran is incompetent and did not knowingly, voluntarily, and intelligently waive his right to post-conviction review," but "that belief alone is not sufficient to overcome the rule's requirement" that Corcoran authorize the claim. *Id.* We also noted that the claims were likely to fail anyway because "both contentions appear to constitute free-standing claims of error that would not be available for post-conviction review." *Id.*

Justice Rucker again dissented. Like the State Public Defender argues here, Justice Rucker disagreed with the weight the majority placed on Corcoran's explanations of his understanding of his rights and the

proceedings and instead gave greater weight to the testimony of the three mental health experts who concluded Corcoran was not competent. *Id.* at 666 (Rucker, J., dissenting). Justice Rucker acknowledged "that the existence of delusions and a diagnosis of paranoid schizophrenia do not necessarily preclude rational decision-making and competence." *Id.* at 669. But he believed there was more credence to the experts' conclusion "that Corcoran's decision to welcome and hasten his own death is based on his delusional perception of reality and has no basis in rational thought whatsoever." *Id.*

We affirmed our judgment on rehearing with a published opinion. *Corcoran v. State*, 827 N.E.2d 542, 546 (Ind. 2005).

C. Corcoran's Untimely Petition for Post-Conviction Relief

While the appeal of Corcoran's competency proceedings was pending, he changed his mind and decided to pursue post-conviction relief. He then filed a petition for post-conviction relief reflecting his authorization, but that was after the deadline, so the post-conviction court dismissed his petition, and we affirmed. *Corcoran v. State*, 845 N.E.2d 1019, 1020 (Ind. 2006). Only Justice Rucker dissented, this time without a separate opinion. Our Court's majority opinion emphasized that by that point, we had "afforded Corcoran considerable review of his sentence[] and the post-conviction court's competency determination." *Id.* (citations omitted). And "[t]he public interest in achieving finality at [that] stage weigh[ed] heavily against further review." *Id.* at 1023.

II. Federal Court Proceedings

A. District Court Habeas Proceedings

Following those first six years of post-conviction litigation, review of Corcoran's conviction and sentence moved to the federal courts when he filed a habeas corpus petition under 28 U.S.C. § 2254 in the Northern

District of Indiana. The court began by noting the "unusual and more convoluted than normal" procedural history. *Corcoran v. Buss*, 483 F. Supp. 2d 709, 712 (N.D. Ind. 2007), *rev'd*, 551 F.3d 703 (7th Cir. 2008), *cert. granted, judgment vacated sub nom. Corcoran v. Levenhagen*, 558 U.S. 1, 130 S. Ct. 8, 175 L. Ed. 2d 1 (2009), *and opinion reinstated sub nom. Corcoran v. Wilson*, 651 F.3d 611 (7th Cir. 2011), *and aff'd as modified sub nom. Corcoran v. Levenhagen*, 593 F.3d 547 (7th Cir. 2010), *as amended on denial of reh'g and reh'g en banc* (Apr. 14, 2010), *and aff'd in part, rev'd in part sub nom. Corcoran v. Wilson*, 651 F.3d 611 (7th Cir. 2011). As the citation for that statement foreshadows, the procedural history only got more convoluted from there.

Turning to the claims, the district court felt "compelled to note at this point that this habeas corpus petition is seriously untimely," but it did not dismiss because the respondent had not requested dismissal on that basis. *Id.* at 716, 718. It then granted the petition in part. It agreed with Corcoran that the State's pretrial offer (which he rejected) to waive the death penalty in exchange for Corcoran agreeing to a bench trial violated his Sixth Amendment right to a jury trial, and the court ordered the case remanded for resentencing without the option of reimposing the death penalty. *Id.* at 725–26.

Given this holding, the court declined to address the remaining claims that the trial judge made errors in the sentencing, that Indiana's death penalty statute was unconstitutional, that there was prosecutorial misconduct during the penalty phase, and that Corcoran was incompetent to be executed. *Id.* The court rejected the argument that Corcoran was not competent to stand trial or waive his direct appeal because those claims were procedurally defaulted. *Id.* at 728–29.

Corcoran's counsel also challenged our Court's conclusion that he was competent to waive post-conviction proceedings, and after reviewing the record, the district court concluded our determination was "neither an unreasonable application of United State[s'] Supreme Court law nor an unreasonable determination of the facts." *Id.* at 733. The district court noted that "[t]he state courts acknowledged that the petitioner suffers from a mental illness and fully confronted this question," but "[i]n the end they determined that his mental illness did not substantially affect his

capacity to appreciate his position as a death row inmate and that he understood how and why he was there." *Id.* And "[n]either did his mental illness impact his understanding of his legal position *vis-à-vis* his appeals." *Id.* The court explained that while "philosophically one can question whether it can ever be a rational choice to abandon appeals which are the only means to avoid the death penalty, legally even [United States Supreme Court precedent] leaves no doubt that it is possible to do so." *Id.* So, "[f]rom a legal perspective, the state court's determination that the petitioner made a rational choice [w]as not unreasonable." *Id.* It concluded that on this issue, "[t]he opinion of the Supreme Court of Indiana, as presented above, is thorough, thoughtful, and reasonable," so "no relief can be granted on this ground." *Id.* at 733–34.

B. First Seventh Circuit Appeal

The respondent appealed, and the Seventh Circuit reversed the district court's decision granting partial habeas relief and affirmed the district court's decision regarding competency. *Corcoran v. Buss*, 551 F.3d 703, 704 (7th Cir. 2008), *cert. granted, judgment vacated sub nom. Corcoran v. Levenhagen*, 558 U.S. 1, 130 S. Ct. 8, 175 L. Ed. 2d 1 (2009), *and opinion reinstated sub nom. Corcoran v. Wilson*, 651 F.3d 611 (7th Cir. 2011). As for our Court's conclusion that the State's offer not to pursue the death penalty in exchange for Corcoran waiving a jury trial did not violate his constitutional rights, the federal appellate court concluded our decision "was neither incorrect nor unreasonable to warrant the district court's grant of [Corcoran's] habeas petition." *Id.* at 712.

Corcoran cross-appealed the district court's holding that he was competent to waive post-conviction proceedings. But the Seventh Circuit affirmed, observing that our Court "gave careful consideration of all the evidence presented at the post-conviction hearing." *Id.* at 713. The court recounted our acknowledgment "that the experts testified that Corcoran suffered from paranoid schizophrenia and his resulting delusions caused him to waive further review of his sentence, but [we] also found that Corcoran had a clear awareness of the status of his case and what was at risk if he waived further review." *Id.* And we considered "Corcoran's own

conduct and testimony at the hearing, in which he stated that his decision to waive further proceedings was based on his remorse for his crime, and not on any 'delusions' he was said to have been experiencing." *Id.* In the end, while "experts believed otherwise, the Indiana Supreme Court was entitled to accept Corcoran's contention that his request to waive further proceedings was based on his belief that death is a just punishment for his crimes." *Id.*

The court also noted our repeated conclusions that a defendant's acceptance of the death penalty is not necessarily irrational. *Id.* at 714 (citing *Smith v. State,* 686 N.E.2d 1264, 1273 (Ind. 1997) (considering a defendant's preference for death over life imprisonment, where there was an indication of his desire not to spend the rest of his life in prison, and concluding that to do so is not "per se irrational"). And it noted it had reached that conclusion in the past too. *Id.* (citing *Wilson v. Lane,* 870 F.2d 1250, 1254 (7th Cir. 1989) (affirming a district court's finding of a death row inmate's competency to waive further appeals even though the inmate was ruled mentally incompetent after considering the inmate's unwavering testimony that he was aware of his position and of the federal review options available to him, and that he based his decision not on the conditions of his confinement, but on his belief that death was a better option than life in prison)).

The court further found "no support for Corcoran's contention that a petitioner who has been diagnosed with a mental illness is not competent to waive post-trial proceedings." *Id.* As it explained, the question "is whether a mental illness substantially affects the capacity to appreciate his options and make a rational choice among them." *Id.* The Seventh Circuit's "review of the transcripts and the evidence before the Indiana Supreme Court reveals that it (as well as the two other courts that considered Corcoran's competency) thoroughly and conscientiously examined Corcoran's claims of incompetency, and its findings that he had a 'rational understanding of and [could] appreciate his legal position' are factually supported by the record." *Id.* The court remanded with instructions to deny habeas relief, leaving Indiana at liberty to reinstate the death sentence. *Id.*

Judge Williams dissented in part, disagreeing with the majority on the competence issue. She saw the issue like Justice Rucker did. She explained that "[n]o one contests that Corcoran suffers from a mental illness," and that "is clear from his delusion that prison guards torture him daily with an ultrasound machine, his conversations with individuals who are not there, and his delusion that he suffers from an involuntary speech disorder." *Id.* at 714–15 (Williams, J., concurring in part and dissenting in part). Like Justice Rucker, Judge Williams placed great weight on the fact that "[t]he three experts who testified in the competency hearing unanimously concluded that Corcoran suffers from paranoid schizophrenia that renders waiver of further appeal of his death sentence impossible because the illness prevents him from making rational decisions." *Id.* at 715. Judge Williams didn't believe the record supported some of our Court's factual statements, and she faulted the Court for failing "to consider Corcoran's testimony in light of his delusions." *Id.* at 716.

C. First United States Supreme Court Review

The United States Supreme Court then granted certiorari and vacated the Seventh Circuit's decision in a *per curiam* opinion. *Corcoran v. Levenhagen*, 558 U.S. 1, 3 (2009). It did not quarrel with the analysis of the Seventh Circuit panel majority for the issues the panel considered, but Corcoran had raised other issues too. So the Supreme Court remanded for the Seventh Circuit either to consider the four other grounds for habeas relief that Corcoran raised or to explain why consideration of those issues was unnecessary. *Id.* at 2.

D. Seventh Circuit Remand

On remand, the Seventh Circuit concluded that "all of Corcoran's remaining habeas challenges are waived, and that three of them are frivolous, but that one of the challenges nevertheless entitles him to a new sentencing hearing." *Corcoran v. Levenhagen*, 593 F.3d 547, 549 (7th Cir.), *as amended on denial of reh'g and reh'g en banc* (Apr. 14, 2010), *cert. granted, judgment vacated sub nom. Wilson v. Corcoran*, 562 U.S. 1, 131 S. Ct. 13, 178 L.

Ed. 2d 276 (2010). That one issue was that the Seventh Circuit agreed with Corcoran that the trial judge again relied on a non-statutory aggravator when reimposing the death sentence because she said that her statements about Corcoran's future dangerousness, the victims' innocence, and the heinousness of the murders were part of the explanation for the weight she gave to the statutory factor for multiple murders. *Id.* at 551. And, the Seventh Circuit explained, "factor weighting is part of factor 'balancing', the very process in which the trial court disclaimed reliance on non-statutory aggravators." *Id.*

E. Second U.S. Supreme Court Review

The case then returned to the United States Supreme Court, and it again issued a *per curiam* opinion reversing the Seventh Circuit. *Wilson v. Corcoran*, 562 U.S. 1, 2 (2010). It explained that "[f]ederal courts may not issue writs of habeas corpus to state prisoners whose confinement does not violate federal law." *Id.* The panel's discussion of the sentencing factors addressed a matter of state law, and "the panel's opinion contained no hint that it thought the violation of Indiana law it had unearthed also entailed the infringement of any federal right." *Id.* at 5.

F. Second Seventh Circuit Remand

On remand to the Seventh Circuit, the federal appellate court concluded that "[i]n hindsight [it] should have returned the case to the district court after the first remand from the Supreme Court," which it went ahead and did on the second remand. *Corcoran v. Wilson*, 651 F.3d 611, 613 (7th Cir. 2011). It noted, "however, that neither of the Supreme Court's decisions casts doubt on [the Seventh Circuit's] resolution of the issues raised in the initial appeal, in which [the court] found no basis for habeas relief on the claimed Sixth Amendment violation or on the issue of Corcoran's competency to waive post-conviction remedies." *Id.* The court therefore reinstated and incorporated by reference its earlier opinion in *Corcoran v. Buss*, 551 F.3d 703, "to the extent that it (1) reversed the district court's judgment granting habeas relief on the basis of the claimed Sixth Amendment violation; and (2) affirmed the district court's conclusion that

the Indiana courts did not mishandle the issue of Corcoran's competence to waive post-conviction remedies." *Corcoran*, 651 F.3d at 613. The court also reinstated Judge Williams' dissent on the competency issue. *Id.* at 613–614. And it remanded to the district court to permit it to address Corcoran's remaining grounds for habeas relief. *Id.* at 614.

G. District Court Remand

On remand, the district court considered the remaining habeas claims. While the habeas petition initially argued eight grounds for relief, only two remained contested. *Corcoran v. Buss*, No. 3:05-CV-389, 2013 WL 140378, at *1 (N.D. Ind. Jan. 10, 2013), *aff'd sub nom. Corcoran v. Neal*, 783 F.3d 676 (7th Cir. 2015). Corcoran's counsel claimed "that in imposing the death penalty the trial court improperly considered non-statutory aggravating circumstances and failed to consider mitigating evidence, all in violation of the petitioner's constitutional rights as secured by the Eighth and Fourteenth Amendments." *Id.* They also claimed "that Indiana's Death Penalty Statute is facially unconstitutional because it does not distinguish between circumstances that warrant a sentence of death and circumstances that warrant a sentence of life imprisonment without parole." *Id.* The district court rejected both claims, explaining that "[b]oth claims were adjudicated on the merits by the Indiana Supreme Court, which ruled in favor of the State," and counsel had not demonstrated error as required by 28 U.S.C. § 2254(d). *Id.*

H. Second Seventh Circuit Appeal

Corcoran again appealed to the Seventh Circuit, which affirmed. *Corcoran v. Neal*, 783 F.3d 676, 677 (7th Cir. 2015). The court explained that its earlier opinion disagreed with our Court's assessment that the trial judge did not in fact rely on nonstatutory aggravating factors, but that vacated decision "did not adequately grapple with the deference owed to state-court factual findings under the Antiterrorism and Effective Death Penalty Act." *Id.* After "[g]iving the matter a fresh look," the court concluded our "factual determination was not unreasonable." *Id.* The court further concluded that our Court "reasonably determined that the

trial judge considered all proffered evidence in mitigation," and "[t]he sentencer's obligation to consider mitigating evidence in a capital case does not require that the evidence be credited or given any particular weight in the final sentencing decision." *Id.* at 677–78.

III. State's Motion to Set Execution Date

At that point, there was no remaining litigation and no stay of execution.

On June 26, 2024, the State filed a Verified Motion to Set Execution Date. It explained that "Corcoran has completed state and federal review of his convictions and sentence." Mot. at 1, ¶ 2. And "[n]ow that the federal courts have denied Corcoran's federal habeas petition, no further grounds for review of the validity of his convictions or sentence are available." *Id.* at 3, ¶ 3. Because "[t]his Court has the exclusive jurisdiction to stay the execution of a death sentence as well as the duty to order a new execution date when the stay is lifted," the State requested that we set the date for Corcoran's execution. *Id.* at 3–4, ¶ 5.

The State Public Defender filed a Response to Motion to Set Execution Date, which began by quoting the dissents from Justice Rucker and Judge Williams, and then arguing that the Court should deny the motion because "executing the unquestionably seriously mentally ill Appellant would violate the Eighth Amendment to the United States Constitution and Article I, § 16 of the Indiana Constitution." Resp. at 1. The evidence on which the State Public Defender relied came from the previous direct appeal record and the previous competency proceedings record. *See id.* at 2 n.1, 18.

We granted the State's motion, explaining our limited role given the procedural posture. We acknowledged that "a petitioner can raise claims involving previously undiscovered evidence through a written petition under Section 35-50-2-9(k), raise constitutional claims through a successive petition for post-conviction relief under Post-Conviction Rule 1(12), or raise challenges to an execution protocol through a civil lawsuit." Order at 2. But Corcoran had not pursued any such claims, and the evidence the

State Public Defender cited in the response brief was not new. *Id.* We therefore granted the State's motion on September 11, 2024, and set an execution date of December 18, leaving over three months for the State to undertake preparations for an execution and for Corcoran to pursue any remaining remedies he believed warranted.

IV. State Public Defender's Current Motions for Permission to File Successive Petitions

For most of that time, neither Corcoran nor anyone on his behalf pursued any claims. But on November 15, 2024, the State Public Defender filed four submissions in our Court: two motions (with proposed petitions) seeking permission to file two successive post-conviction relief petitions, and two motions to stay the execution (one motion for each petition) while those petitions are litigated.

The first proposed Successive Petition for Post-Conviction Relief argues: (1) that Corcoran's death sentence violates the ban on "cruel and unusual" punishments in the Eighth Amendment to the U.S. Constitution because he is severely mentally ill, and executing the severely mentally ill is cruel and unusual; (2) Corcoran's death sentence violates the ban on "cruel and unusual punishments" in Article One, Section 16 of the Indiana Constitution for the same reason; and (3) Corcoran's death sentence violates the Equal Protection Clause in the Fourteenth Amendment to the U.S. Constitution because the State is treating the severely mentally ill different than the intellectually disabled and juveniles, whom the State will not execute. The second proposed Successive Petition for Post-Conviction Relief argues that "Corcoran is not currently competent to be executed under *Panetti v. Quarterman*, 551 U.S. 930 (2007), and *Ford v. Wainwright*, 477 U.S. 399 (1986)," because the State Public Defender does not believe Corcoran can "rationally understand his execution or the reason for it." [Second] Successive Pet. for Post-Conviction Relief at 1–2, 15.

We have jurisdiction because of the death sentence, Ind. Appellate Rule 4(A)(1)(a), and we expedited briefing on the motions. That briefing closed

on December 3, 2024, fifteen days before the execution date. Each member of the Court reviewed the submissions as they were filed, and the Court discussed the submissions at a conference after the briefing concluded. To afford counsel the benefit of the remaining time before the execution date to pursue any relief they believe appropriate in the federal courts, we immediately issued an order reflecting the Court's decision denying the motions on December 5, with this opinion explaining the reasoning a few days later.

Discussion and Decision

"Any person who has been convicted of, or sentenced for, a crime by a court of this state," Ind. Post-Conviction Rule 1(1)(a), "has the right to collaterally attack that conviction or sentence through a petition for post-conviction relief." *Shaw v. State*, 130 N.E.3d 91, 92 (Ind. 2019). "But a second or successive post-conviction petition cannot be filed without prior authorization from this Court (in capital appeals) or the Court of Appeals (in all other appeals), either of which 'will authorize the filing of the petition if the petitioner establishes a reasonable possibility' that the petitioner is entitled to relief." *Id.* (quoting P-C. R. 1(12)). "By permitting successive post-conviction petitions only when the petitioner makes some showing of merit, this appellate screening function reduces the burden on trial courts." *Id.*

"In deciding whether a petitioner has made the required showing, we consider the applicable law, the successive post-conviction papers, materials from the prior appeals and post-conviction proceedings including the record, briefs and court decisions, and any other material we deem relevant." *Wrinkles v. State*, 915 N.E.2d 963, 965 (Ind. 2009). "Post-conviction proceedings are not a 'super-appeal'; rather, the grounds enumerated in the Post-Conviction Rules are limited to issues that were not known at the time of the original trial or that were not available on direct appeal." *Shaw*, 130 N.E.3d at 92–93 (quotations omitted). If we were to authorize the successive post-conviction petitions proposed here, Corcoran would have a right to appointed counsel, and the case would return to the trial court for proceedings consistent with Post-Conviction

Rule 1(12)(c). *See Baird v. State*, 833 N.E.2d 28, 30 (Ind. 2005), *cert. denied*, 546 U.S. 924 (2005).

Corcoran has informed us that he does not wish to assert any further claims in the courts, including that he does not wish to file any successive petitions for post-conviction relief. His affidavit states bluntly: "I, Joseph Edward Corcoran, do not wish to litigate my case further." Affidavit at 1—2, ¶ 3; *id.* ("I am hereby making this statement to the Court through this affidavit: I do not wish to proceed with more and/or endless litigation."). The State Public Defender confirms that remains his wish. [Second] Mot. for Stay of Execution at 6 ("Indeed, currently, Mr. Corcoran wants to be executed . . . .").

Nevertheless, the State Public Defender seeks permission to file two successive post-conviction relief petitions on his behalf anyway. The State argues we should not authorize the filings because Corcoran has not signed them and does not authorize them, and even if he had signed or authorized them, there is not a reasonable possibility that he is entitled to post-conviction relief. We agree with the State that we must deny the State Public Defender's motions for two independently sufficient reasons.

First, Corcoran does not wish to pursue post-conviction relief. Our Court has already concluded he is competent to make that decision, and a key premise of the State Public Defender's submissions is that nothing has changed about Corcoran's condition since then. Second, the submissions do not demonstrate a reasonable possibility that Corcoran is entitled to relief.

I. Corcoran's Competency to Waive Post-Conviction Relief

As we held in the previous appeal of the post-conviction court's determination that Corcoran is competent to waive post-conviction remedies, a petitioner seeking those remedies must authorize the petition unless they are incompetent to do so. *Corcoran v. State*, 820 N.E.2d 655, 663 (Ind.), *aff'd on reh'g*, 827 N.E.2d 542 (Ind. 2005) ("Corcoran himself did not authorize this proceeding within the timeframe required by Criminal Rule

24(H) and without his authority, neither the trial court in this proceeding nor this Court has jurisdiction to review claims for post-conviction relief."). The State Public Defender says that, for a couple reasons, it doesn't matter that Corcoran didn't sign the two proposed petitions, but we disagree with each.

First, the State Public Defender argues that "attorneys are agents of their clients," so they can always sign on their client's behalf. Reply at 13. This argument misses the more fundamental point: "It is the primary duty of an agent to obey the instructions given by the principal," and "[t]he essence of an agency relation is the right of the principal to give directions that the agent is under a duty to obey as long as they remain the agent." 2A C.J.S. Agency § 295; *see also* Restatement (Third) of Agency § 8.09(2) (Am. Law Inst. 2006) ("An agent has a duty to comply with all lawful instructions received from the principal and persons designated by the principal concerning the agent's actions on behalf of the principal."). So even if the attorneys are Corcoran's agents who can sign filings on his behalf, he still has to authorize them to file the successive petitions unless he is incompetent to waive post-conviction relief. *Corcoran*, 820 N.E.2d at 663.

That competency question has been thoroughly litigated in both state and federal courts, which have concluded Corcoran is competent to waive post-conviction remedies after reviewing the same extensive evidentiary record that the State Public Defender relies on now. As the Seventh Circuit described, our Court "gave careful consideration of all the evidence presented at the post-conviction hearing" and then concluded Corcoran "had a clear awareness of the status of his case and what was at risk if he waived further review," and that "his request to waive further proceedings was based on his belief that death is a just punishment for his crimes." *Corcoran v. Buss*, 551 F.3d 703, 712 (7th Cir. 2008), *cert. granted, judgment vacated sub nom. Corcoran v. Levenhagen*, 558 U.S. 1 (2009), *and opinion reinstated sub nom. Corcoran v. Wilson*, 651 F.3d 611 (7th Cir. 2011).

Second, the State Public Defender argues it would be bad policy "to deprive a mentally ill person access to the court to litigate competency simply because they do not sign a petition." Reply at 14. Depriving that

access, the argument goes, would deny the person of "access to the courts to evaluate their mental illness because of their mental illness." *Id.* at 15. But Corcoran's competency to waive post-conviction relief has already been litigated in state and federal courts. And the State Public Defender does not claim Corcoran's condition has changed such that while he was previously competent to waive post-conviction remedies, he is no longer competent. Instead, the State Public Defender confirmed Corcoran's condition is the same as it has been for decades. [Second] Successive Pet. for Post-Conviction Relief at 14 ("*As he has for twenty years*, he experiences auditory hallucinations, psychosis, and the ever-present delusions . . . ."(emphasis added)).

Because our Court has concluded that Corcoran is competent to waive post-conviction remedies and he has again elected to do so, we do not authorize the successive petitions.

II. Appellate Screening

The State Public Defender's motions fail for another reason: they do not demonstrate a reasonable possibility that Corcoran is entitled to post-conviction relief through either petition.

A. First Proposed Petition

The first proposed petition seeks relief based on arguments that Corcoran's death sentence violates: (1) the ban on "cruel and unusual" punishments in the Eighth Amendment to the U.S. Constitution because he is severely mentally ill, and executing the severely mentally ill is cruel and unusual; (2) the ban on "cruel and unusual punishments" in Article One, Section 16 of the Indiana Constitution for the same reason; and (3) the Equal Protection Clause in the Fourteenth Amendment to the U.S. Constitution because the State is treating the severely mentally ill different than the intellectually disabled and juveniles, whom the State will not execute. There is no reasonable possibility of success on this petition for at least two threshold reasons.

First, the State Public Defender lacks standing to make these arguments. As we said the last time these arguments were made on Corcoran's behalf contrary to his wishes: "We hold that the State Public Defender does not have standing to raise the other claims she presents without Corcoran's consent." *Corcoran v. State*, 820 N.E.2d 655, 664–65 (Ind.), *aff'd on reh'g*, 827 N.E.2d 542 (Ind. 2005). We agreed with the State that the State Public Defender's standing was limited to litigating Corcoran's competency to waive post-conviction relief. *Id.* at 658.

Second, as we also observed in that opinion, these arguments "appear to constitute free-standing claims of error that would not be available for post-conviction review." *Id.* at 663. "Indiana's Post-Conviction Rule 1(8) addresses res judicata and procedural default." *Isom v. State*, 235 N.E.3d 150, 151 (Ind. 2024). That rule says: "All grounds for relief available to a petitioner under this rule must be raised in his original petition." P-C.R. 1(8). "The petitioner may raise new claims in a successive petition only if the unraised claims 'could not have been raised in earlier proceedings.'" *Isom*, 235 N.E.3d at 152 (quoting *Matheney v. State*, 834 N.E.2d 658, 662 (Ind. 2005)).

"Unraised claims that are 'knowingly, voluntarily and intelligently waived . . . may not be the basis for a subsequent petition' absent a sufficient reason [they were] not asserted.'" *Id.* (quoting P-C.R. 1(8)). "Unraised claims that should have been raised previously are waived or 'procedurally defaulted.'" *Id.* (quoting *Matheney*, 834 N.E.2d at 662). "Our res judicata doctrine bars relitigating post-conviction claims that have already been decided." *Id.* (cleaned up). Claims that it would be unconstitutional for the State to execute Corcoran because of his mental illness could have been, and indeed were, raised in the previous proceedings. *Corcoran*, 820 N.E.2d at 657, 662 (rejecting the claim that "it would be unconstitutional to execute a severely mentally ill person, such as Corcoran" (quotations omitted)).

Because the State Public Defender lacks standing to raise these claims, and procedurally defaulted claims have no chance of success anyway, the State Public Defender has not demonstrated a reasonable possibility of success with the first-filed petition.

B. Second Proposed Petition

The State Public Defender's second Successive Petition for Post-Conviction Relief argues Corcoran is not competent to be executed. Specifically, she argues that "Corcoran is not currently competent to be executed under *Panetti v. Quarterman*, 551 U.S. 930 (2007), and *Ford v. Wainwright*, 477 U.S. 399 (1986)," because, she says, Corcoran cannot "rationally understand his execution or the reason for it." [Second] Successive Pet. for Post-Conviction Relief at 1–2. Like the first petition, this petition does not demonstrate a reasonable possibility that Corcoran is entitled to relief.

1. Eighth Amendment Limitations

The Eighth Amendment to the U.S. Constitution prohibits "cruel and unusual punishments," U.S. Const. amend. VIII, and that prohibition is applicable to the States through the Fourteenth Amendment, *Jones v. Mississippi*, 593 U.S. 98, 105 (2021). The United States Supreme Court interprets that bar on cruel and unusual punishments as prohibiting the execution of a prisoner who has "lost his sanity" after sentencing, *Ford*, 477 U.S. at 406, which, in this context, means they "are unaware of the punishment they are about to suffer and why they are to suffer it," *id.* at 422 (Powell, J., concurring); *see also Timberlake v. State*, 858 N.E.2d 625, 628–29 (Ind. 2006) (explaining that "persons are incompetent to be executed if they are insane; persons are insane if they are unaware of the punishment they are about to suffer and why they are to suffer it").

"The critical question is whether a prisoner's mental state is so distorted by a mental illness that he lacks a rational understanding of the State's rationale for his execution." *Madison v. Alabama*, 586 U.S. 265, 269 (2019) (cleaned up). In other words, "the issue is whether a prisoner's concept of reality is so impaired that he cannot grasp the execution's meaning and purpose or the link between his crime and its punishment." *Id.* (cleaned up). Prisoners are "presumed to be" competent to be executed. *Timberlake*, 858 N.E.2d at 628. And to litigate the question of competence to be executed, the movant must make a "substantial threshold showing," *Panetti*, 551 U.S. at 949, that their mental illness prevents them from

"'rational[ly] understanding' why the State seeks to impose" the death penalty, *Madison*, 586 U.S. at 267.

A couple key considerations inspire the U.S. Supreme Court's understanding that the Eighth Amendment prohibits executing those who lack a rational understanding of the execution even though their mental illness does not excuse their crime and they were competent to be convicted. One is "a moral intuition that killing one who has no capacity to understand his crime or punishment simply offends humanity." *Id.* at 268 (quotations omitted). And the other is "the lack of retributive value in executing a person who has no comprehension of the meaning of the community's judgment." *Id.*

2. Corcoran's Competency to be Executed

We agree with the State that the State Public Defender has not made the substantial threshold showing that Corcoran's mental illness prevents him from rationally understanding why the State seeks to impose the death penalty. To the contrary, Corcoran has demonstrated that he does have a rational understanding. As he explained in his recent affidavit, he "understand[s] that if this Court rejects [his] counsel's petition the death warrant will be carried out." Affidavit at 2, ¶ 4. He "will then be put to death for the heinous crime [he] committed," and he understands the "execution will end [his] life." *Id.*

His rational understanding includes the State's reason for executing him. He explains: "I understand the execution, in the interest of judgment, serves as both a punishment and a deterrent." *Id.* He also has a sophisticated, rational understanding of the proceedings. He says in his affidavit: "I remind this Court that my competence to waive my appeals has been adjudicated throughout the extensive appeal process." *Id.* at 2, ¶ 5. And while he understands counsel's strategy "to delay any and all executions through endless litigation" with the "hope to set a precedent so all future death penalty cases can be endlessly litigated effectively putting an end to all executions," *id.* at 1, ¶ 2, he does "not wish to litigate [his] case further," because he is "guilty of the crime [he] was convicted of," and he "accept[s] the findings of all the appellate courts," *id.* at 1–2, ¶ 3.

"The long drawn out appeal history has addressed all the issues [he] wished to appeal." *Id.*

That reaffirms what he has been saying for twenty years, and what we've previously considered to be a rational understanding. In the competency proceedings to evaluate whether he could waive post-conviction review, the courts credited his testimony that he understood that he was being executed "for what [he had] done," and he agreed "the death penalty is a just punishment for four counts of murder." *Corcoran*, 820 N.E.2d at 660–61. He said the same thing to the federal courts, explaining that "since [he is] guilty of murder," he "should be executed." Ex. 2 to Resp. in Opp'n to Mots. at 1. And he still thought "the death penalty is a just punishment for someone who is guilty of four counts of murder." *Id.*

The State Public Defender argues that while Corcoran has a *factual* understanding that the State is going to execute him as punishment for his crime, that doesn't necessarily mean he has a *rational* understanding. And the State Public Defender points to *Panetti* to illustrate the distinction. In *Panetti*, the prisoner understood the state was saying that it wished to execute him for his murders, but "he believe[d] in earnest that the stated reason [was] a 'sham' and the State in truth want[ed] to execute him 'to stop him from preaching.'" 551 U.S. at 955. The U.S. Supreme Court explained that "the principles set forth in *Ford* are put at risk by a rule that deems delusions relevant only with respect to the State's *announced* reason for a punishment or the fact of an imminent execution, as opposed to the *real* interests the State seeks to vindicate." *Id.* at 959 (citation omitted) (emphases added). So if a prisoner is under the delusion that the State's stated reasons for punishment are a sham, then the prisoner is incompetent even though they understand what the State is claiming are the reasons.

But that isn't the case here. The State Public Defender doesn't claim, and there is no substantial threshold showing that, Corcoran has a delusional belief that the State has some reason for punishing him other than the reasons the State claims. No doubt, the State Public Defender points to evidence that some of Corcoran's other beliefs are irrational, but

his understanding of his execution is not. Virtually all the evidence the State Public Defender cites is the evidence we previously considered when determining Corcoran could waive post-conviction remedies. She does identify minimal new evidence—Corcoran's recent writings which reflect continued delusional thinking. But that is offered only to demonstrate that Corcoran's condition remains the same, not that it has changed and he is no longer competent to be executed. [Second] Successive Pet. for Post-Conviction Relief at 14 ("Now in 2024, Mr. Corcoran continues to suffer the debilitating symptoms of his paranoid schizophrenia. As he has for twenty years, he experiences auditory hallucinations, psychosis, and the ever-present delusions . . . ."); *id.* at 15 ("In short, Mr. Corcoran's longstanding and documented mental illness continues to torment him *as it did at the time of the 1997 offense*." (emphasis added)).

Many capital cases involving prisoners with similar mental illnesses illustrate that a prisoner can suffer from delusions that do not render them incompetent for execution. For example, in *Timberlake*, our court rejected the *Ford* claim even though Timberlake suffered from chronic paranoid schizophrenia because he had "the mental capacity to understand that he [was] about to be executed and why." *Timberlake*, 858 N.E.2d at 626. Timberlake suffered under "a paranoid delusional system resulting in his belief that a secret machine, operated by the government, controls, monitors and tortures people through their brains." *Id.* at 629.

Nevertheless, Dr. George F. Parker—who also examined Corcoran, *Corcoran*, 820 N.E.2d at 661—explained after examining Timberlake that while it was "abundantly clear that Mr. Timberlake was severely mentally ill, and suffers from essentially continuous auditory hallucinations," he "remained relatively organized regarding his legal status," and he "demonstrated an awareness that he had been convicted of the murder of a state police officer and had been sentenced to death as a result of his conviction." *Timberlake*, 858 N.E.2d at 629. Thus, "despite abundant evidence of psychotic systems, including constant auditory hallucinations and a complex and organized paranoid delusional system, it was clear . . . that Mr. Timberlake had the mental capacity to understand that he was about to be executed and why he was to be executed." *Id.* at 629–30. Based

on that evidence, we denied the request for further review and set an execution date. *Id.* at 630.

The State Public Defender has provided plenty of evidence that Corcoran suffers from a mental illness. But despite his mental illness, Corcoran has demonstrated he understands why he is being executed, and the State Public Defender has not provided any evidence suggesting that Corcoran's understanding is irrational. When concluding that Corcoran was competent to waive post-conviction remedies, we concluded that he has a non-delusional understanding of these legal proceedings. And part of what we relied on was his "reasoning that his death sentence is commensurate with the crime he committed (the conclusion to which both the original trial court jury and judge came)." *Corcoran*, 820 N.E.2d at 661.

We acknowledge, as the State Public Defender argues, that the inquiries for competency to waive post-conviction remedies and competency to be executed are not identical, and a claim challenging competency for execution is not ripe until the execution is scheduled. But those inquiries do overlap where it is relevant here. Our determination that Corcoran could waive his post-conviction remedies included an analysis of whether his mental illness interfered with his ability to understand why the State was executing him. And now that a challenge to competency for execution is ripe, there is no indication that Corcoran's understanding of why he is to be executed has changed. Every indication is that it remains the same. At bottom, the State Public Defender's arguments are rehashing the debates between the majorities and the dissents in the previous state and federal opinions evaluating Corcoran's competency, and that is not an adequate basis for further delaying the execution.

There is therefore no substantial threshold showing that Corcoran is not competent to be executed.

III. Motions for Stay

The two pending motions seek a stay of execution so that the successive petitions can be litigated. Because we do not authorize those petitions, we deny both motions for stay.

Conclusion

For these reasons, we decline to authorize the petitions for successive post-conviction relief, and we deny the requests for a stay of execution. Our rules permit—but do not require—a petition for rehearing. Rehearing should not be sought if counsel intend to again make the arguments we have already addressed. But if they do petition for rehearing, the petition must be filed no later than 12:00 p.m. on Thursday, December 12, 2024. The State's response must be filed no later than 12:00 p.m. on Friday, December 13, 2024. There will be no further responsive briefing, and no extensions of time for filing will be granted.

Massa and Slaughter, JJ., concur.
Goff, J., dissents with separate opinion in which Rush, C.J., joins.

ATTORNEYS FOR PETITIONER
Amy E. Karozos
Public Defender of Indiana

Joanna L. Green
Laura L. Volk
Deputy Public Defenders
Indianapolis, Indiana

Laurence E. Komp
Federal Public Defender Office
Kansas City, Missouri

ATTORNEYS FOR RESPONDENT
Theodore E. Rokita
Attorney General of Indiana

Angela Sanchez
Chief Counsel of Appeals

Tyler Banks
Deputy Attorney General
Indianapolis, Indiana

Goff, J., dissenting.

There is no penalty more severe—more irrevocable—than death. So, when reviewing cases imposing this penalty, justice demands not haste but precision and care. Guaranteeing this demand constitutionally requires ensuring a prisoner is competent to be executed.

A trio of decisions from the U.S. Supreme Court provides the proper considerations. In *Ford v. Wainwright*, the Court held that the Eighth Amendment prohibits executing prisoners "whose mental illness prevents" them "from comprehending the reasons for the penalty or its implications." 477 U.S. 399, 417 (1986). The Court later clarified that the question is whether the prisoner can "reach a rational understanding of the reason for the execution." *Panetti v. Quarterman*, 551 U.S. 930, 958 (2007). And, most recently, the Court recognized that execution "lacks retributive purpose when a mentally ill prisoner cannot understand the societal judgment underlying [their] sentence." *Madison v. Alabama*, 586 U.S. 265, 279 (2019). To that end, "[a] prisoner's awareness of the State's rationale for an execution is not the same as a rational understanding of it." *Panetti*, 551 U.S. at 959. When an evidentiary threshold showing is made that a prisoner lacks this understanding, a hearing must be held to evaluate competency. *See id.* at 949–50; *Baird v. State*, 833 N.E.2d 28, 29 (Ind. 2005). And this showing can be made through "observations by lay persons, including a prisoner's attorney, and older assessments by experts." *Timberlake v. State*, 858 N.E.2d 625, 627 (Ind. 2006).

The evidence submitted by Corcoran's attorneys reveals a documented history of severe mental illness, an inability to cooperate with counsel, and a desire to be executed to escape prison—all of which raise substantial questions about his current mental capacity. As a result, we should stay Corcoran's execution to allow his attorneys to seek successive post-conviction relief to litigate his current competency. But at a minimum, we should stay Corcoran's execution and order a psychiatric examination.

I. Evidence submitted by Corcoran's attorneys raises substantial questions about his competency to be executed.

The critical question under the Eighth Amendment is whether Corcoran's "mental state is so distorted by a mental illness that he lacks a rational understanding of the State's rationale for his execution." *Madison*, 586 U.S. at 269 (cleaned up). In other words, we must ask whether Corcoran's "concept of reality is so impaired that he cannot grasp the execution's meaning and purpose or the link between his crime and its punishment." *Id.* (cleaned up).

The evidence before us—consisting of prior expert evaluations and contemporary accounts and reports—raise significant concerns about whether Corcoran has the requisite rational understanding.

A. Every medical expert to have examined Corcoran has found him to be seriously mentally ill.

At various points throughout Corcoran's capital proceedings, at least five different medical experts have found him incompetent. In 1999, two psychiatrists—Dr. Philip Coons and Dr. Larry Davis—concluded that Corcoran's paranoid schizophrenia prevented "his ability to assist his attorney in his defense," effectively rendering him incompetent to stand trial. Def.'s Pre-Sent. Memo., Supp. R. Vol. 1, pp. 23, 24. And at a 2003 post-conviction competency hearing, three experts—forensic psychiatrist Dr. George Parker, clinical psychologist Dr. Robert Kaplan, and neuropsychologist Dr. Edmund Haskins—testified to Corcoran's incompetency to waive his appeals. Post-Conviction Comp. Tr., pp. 13, 59, 66. According to these experts, Corcoran was not engaging in rational decision-making but electing to avoid post-conviction review because of his delusion that the prison was torturing him with an ultrasound machine. *Id.* at 11–12, 14, 50, 53, 66–67.

To ignore these findings now and proceed with execution without a current competency evaluation amounts to enabling his delusions—a

state-sanctioned escape from suffering rather than a measured act of justice. *See Panetti*, 551 U.S. at 960 (recognizing that "[t]he beginning of doubt about competence . . . . is a psychotic disorder").

B. Corcoran's mental illness distorts his ability to rationally engage with the legal process.

Corcoran has consistently displayed an inability to cooperate with counsel and act rationally throughout his legal proceedings. His trial counsel recently submitted affidavits confirming that Corcoran's reasons for rejecting the State's plea offer "defied logic" and that they had "difficulties . . . consulting with Corcoran in a rational or logical manner." Affidavit of Mark Thoma, pp. 1, 3; Affidavit of John Nimmo, p. 1. To those points, Dr. Coons explained at trial that Corcoran's "refusal to accept either a plea bargain or a bench trial without the death penalty was a product of his mental illness." Def.'s Pre-Sent. Memo., Supp. R. Vol. 1, p. 24. As explained in Section I.A, evidence shows during post-conviction proceedings that Corcoran continued to lack a rational understanding of his decisions; the same was true during his federal habeas proceedings. Corcoran's Reply Br. at 3–4. And just last week, Corcoran's attorneys observed that he has never been able to "assist counsel with his defense" or "make rational decisions about his case." *Id.* at 4–5.

Corcoran's persistent refusal to cooperate with counsel underscores his impaired ability to assess and act on his own legal options. This is not a tactical choice; it is the result of his mental illness, as documented by expert testimony over decades. Allowing a person to "volunteer" for execution—whether by choosing to withhold mitigating evidence at sentencing, waiving the right to appellate review, or electing not to seek post-conviction relief—threatens to undermine the state's heightened-reliability interests in death-penalty cases, Anthony J. Casey, *Maintaining the Integrity of Death: An Argument for Restricting a Defendant's Right to Volunteer for Execution at Certain Stages in Capital Proceedings*, 30 Am. J. Crim. L. 75, 76–77, 97 (2002), and ultimately "threatens to diminish public confidence in the integrity of the judicial system," *Wright v. State*, 168 N.E.3d 244, 262 (Ind. 2021). Corcoran's constant irrational behaviors raise

constitutional red flags that demand scrutiny. *See* Richard J. Bonnie, *Mentally Ill Prisoners on Death Row: Unsolved Puzzles for Courts and Legislatures*, 54 Cath. U. L. Rev. 1169, 1181 (2005) ("The possibility, however slim, that incompetent individuals may not be able to assist counsel in reconstructing a viable factual or legal claim requires that executions be barred under these circumstances.").

Additionally, considering this Court previously recognized counsel's standing to litigate Corcoran's competency to waive post-conviction relief on his behalf without written consent, *see Corcoran v. State*, 820 N.E.2d 655, 658, 664–65 (Ind. 2005), I see no reason for depriving counsel of standing to litigate the question of Corcoran's current competency on his behalf.

C. Contemporaneous evidence reinforces Corcoran's attorneys' incompetency claim.

Corcoran's well-documented paranoid schizophrenia and delusions have persisted for decades. In his world, he suffers from a speech disorder that causes him to unintentionally disclose his innermost thoughts to others as he sleeps. Compounding this paranoia, he believes prison guards perpetually torture him with an ultrasound machine. So pervasive are these delusions, Corcoran's attorneys submit, that he simply "cannot rationally understand the true reason for his execution." Reply Br. at 7. In his mind, Corcoran views execution not as punishment but as the only path to escaping the torment from which he suffers.

Contemporaneous evidence bolsters these observations. In March 2024, for example, medical records from the Department of Correction reported an "observable concern" with Corcoran's "expressed delusions," noting his belief that an "ultrasonic machine" perpetually controls his "thoughts, sleep, voice, etc." Memo. in Support of Successive PCR, Att. A, pp. 2, 3. And in a recently published "whistle-blower report," Corcoran, writing under a pen name, perpetuates these delusions, describing the use of "ultrasonic surveillance devices" by "correctional staff and other individuals and/or agencies" and the effect these devices have on him and other prisoners. JC Chase, *A Whistle-blower Report: Electronic Harassment* 18 (July 2024), Memo. in Support of Successive PCR, Att. B.

II. Because ample evidence raises uncertainty over Corcoran's current competency, a short stay is warranted for the necessary evaluation.

While "delusions come in many shapes and sizes . . . not all will interfere with the understanding that the Eighth Amendment requires." *Madison*, 586 U.S. at 279. And here, Corcoran has made several statements indicating that he understands the true meaning and purpose of his execution. In a 2005 affidavit, he considered the death penalty "a just punishment for someone who is guilty of four counts of murder." State's Opp. Resp., Ex. 2. And in a letter to the district court the following year, he insisted that he "intentionally killed four people knowing that such an act was wrong," adding that he "should be executed" for committing such a crime. *Id.*, Ex. 1. These statements align with sentiments he expressed in a recently filed affidavit in which he attested to understanding the execution "as both a punishment and a deterrent." Affidavit of Joseph Corcoran (Nov. 22, 2024), p. 2.

But these statements, according to Corcoran's counsel, reflect only the dissonance of someone attempting to mask their mental illness. Indeed, much like his severe mental illness, Corcoran's attempts to hide his delusions are well-documented. Dr. Coons testified at trial that a "person with paranoid schizophrenia generally minimizes their symptoms"—behavior he found consistent with Corcoran's attempts to minimize his symptoms. R. Vol. 13, p. 2076; *see also* R. Vol. 11, p. 1658 (Dr. Eric Engum, another trial expert, testifying to Corcoran's "secretive" behavior, which he found "consistent with the paranoia and suspiciousness").

In any event, Corcoran's statements do not negate the evidentiary threshold showing that he is incompetent to be executed. They must be weighed against two-plus decades of evidence apparently establishing that his delusions about the ultrasound machine and sleep and speech disorders were and are very real to him. So even if it seems that Corcoran may understand why the State is seeking execution, the point is that we simply do not know. Even a "prisoner's awareness of the State's rationale for an execution," his acknowledgment that "he will be executed," and his

understanding that "the reason the State has given for the execution is his commission of the crimes in question" does not resolve the inquiry into whether he has a "rational understanding of the reason for the execution." *Panetti*, 551 U.S. at 956–58. A competency evaluation is needed not because Corcoran fails to acknowledge the facts of his case, but because evidence shows that his mental illness distorts his ability to have the requisite rational understanding.

Additionally concerning is that Corcoran's writings reflect a desire to be executed to avoid further imprisonment. In 2006, for example, he expressed a desire to waive his appeals to "die and escape" prison, which he characterized as benefit because he didn't "want to live in prison for the rest of [his] life." State's Opp. Resp., Ex. 1. And the recently filed affidavit reflects a similar desire. *See* Affidavit of Joseph Corcoran (Nov. 22, 2024). The death penalty, however, is not a mechanism for granting reprieve from suffering or a means to expedite escape from incarceration. It is the gravest act the State can undertake, reserved for those who bear the full weight of their moral culpability. And thus, honoring Corcoran's request undermines society's interest "in not allowing the death penalty . . . to be used as a means of state-assisted suicide." *Smith v. State*, 686 N.E.2d 1264, 1275 (Ind. 1997). To accommodate Corcoran's expressed desire and authorize an execution sought to avoid continued incarceration violates the dignity of both the defendant and the judicial process.

At a minimum, to comply with constitutional due process requirements, this Court should appoint a psychiatrist to conduct a psychiatric examination of Corcoran to render an opinion on his current mental state. In *Timberlake v. State*, the petitioner made a competence claim like the one advanced here. *See Timberlake v. State*, No. 49S00-0606-SD235 (Ind. Sept. 18, 2006) (unpublished order for mental examination). While we ultimately found that Timberlake failed to make the requisite showing, we came to that conclusion only after we ordered contemporaneous testing—which Corcoran's attorneys have asked us to do. There is simply no reason to refuse this request. To the contrary, given the "irreversibility" of a death sentence, "we should err on the side of caution in carrying out an execution." *Baird*, 833 N.E.2d at 33 (Boehm, J., dissenting).

Such caution is particularly warranted here. Twenty-five years elapsed between Corcoran being sentenced to death and the State filing a petition asking us to set his execution date. We received that request last June, and now, less than six months later, Corcoran is scheduled to be executed with threshold evidence of incompetency. We should reaffirm our commitment to the Eighth Amendment and the principles it upholds by, at minimum, ordering a psychiatric examination of Corcoran's current mental status. Doing so would ensure that this irrevocable punishment aligns with moral culpability and that we are not conflating such punishment with escape.

Conclusion

Corcoran has been diagnosed with paranoid schizophrenia by multiple experts. Due to that diagnosis, he has persistently displayed an irrational ability to assess and act on his own legal options. And, by his own words, he wants to be executed to avoid being incarcerated for the rest of his life. The bedrock of our constitutional order rests on the premise that punishment must align with moral culpability. With the evidence before us, executing Corcoran without first assessing his current mental competence defies this foundational principle.

For these reasons, and for the reasons above, I dissent from the denial of Corcoran's motion to stay and motion to file a successive petition for post-conviction relief.

Rush, C.J., joins.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

TAHINA CORCORAN, Petitioner, v. RON NEAL, Respondent.	CAUSE NO. 3:24-CV-970-JD

OPINION AND ORDER

Tahina Corcoran, by counsel and as a next friend on behalf of Joseph E. Corcoran, filed a habeas petition challenging the timing of his execution in connection with his conviction on four counts of murder in *State v. Corcoran*, Case No. 02D04-9707-CF-465 (Allen Sup. Ct. filed July 31, 1997). Pursuant to Section 2254 Habeas Corpus Rule 4, the court must dismiss the petition "[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court."[1]

The petition asserts a single claim that Corcoran is not competent to be executed, citing *Ford v. Wainwright*, 477 U.S. 399 (1986), *Panetti v. Quarterman*, 551 U.S. 930 (2007), and *Madison v. Alabama*, 586 U.S. 265 (2019). Before proceeding to the merits, the court will briefly consider the procedural soundness of this claim. Under Indiana law, individuals may raise *Ford/Panetti* claims by seeking authorization to pursue a

[1] On December 12, 2024, the Warden filed a response to the habeas petition without prompting from this court. ECF 17. Except for this footnote, the court prepared this opinion without reviewing the Warden's response. The court has now reviewed it but did not make any changes to this opinion based on that review.

successive post-conviction petition. *Baird v. State*, 833 N.E.2d 28, 29 (Ind. 2005) (A [*Wainwright* claim] is among those that our post-conviction rule on successive post-conviction petitions was designed to address."). The record indicates that Corcoran has pursued this avenue, so the court is satisfied that the claim is exhausted. ECF 1-1 at 167-68. *Panetti* instructs that *Ford/Panetti* claims are not ripe until the execution date is set, which typically occurs after the adjudication of an initial federal habeas petition. *Id.* at 943-48. *Panetti* further interprets the prohibition against unauthorized successive petitions as not applying to claims that were not ripe at the time of the initial habeas proceedings. *Id.* On September 11, 2024, the Indiana Supreme Court set the date of execution for December 18, 2024. *Corcoran v. State*, 240 N.E.3d 701 (Ind. Sept. 11, 2024). The court is thus satisfied that it is not allowing Corcoran to proceed on an unauthorized successive petition or on an untimely claim.

Additionally, the court considers the related questions of whether Corcoran is currently competent to litigate this case and whether a next friend is appropriate. These questions are distinct from the question of whether he is currently competent to be executed. *See Whitmore v. Arkansas*, 495 U.S. 149, 166 (1990) (requiring "meaningful evidence that [the petitioner] was suffering from a mental disease, disorder, or defect that substantially affected his capacity to make an intelligent decision" to demonstrate that a habeas petitioner is incompetent). Perhaps more critically, the court is not required to defer to the State courts under the Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA) to allow this case to proceed with a next friend. *See* 28 U.S.C. 2254(d). As a result, the court finds that Tahina Corcoran has adequately shown

that she is a proper next friend for purposes of the preliminary stages of this habeas case. Left remaining are the issue of procedural default and the merits of the claim, which the court will address below.

PROCEDURAL HISTORY

The complete procedural history of Corcoran's legal proceedings is lengthy and was articulated by the Indiana Supreme Court one week ago in admirable detail. *Corcoran v. State*, 2024 WL 5052384, 2-8 (Ind. Dec. 10, 2024). Indeed, this court has played a substantial role in this procedural history by resolving Corcoran's initial habeas proceedings. *Corcoran v. Buss*, 2013 WL 140378 (N.D. Ind. Jan. 10, 2013). As a result, this court will detail only the procedural history that is particularly relevant to resolving this habeas petition.

In 1999, a jury convicted Corcoran on four counts of murder, and the Allen Superior Court sentenced him to death after affording "medium or low weight" to the mitigating factor of being under the influence of mental or emotional disturbances during the crime. *Corcoran v. State*, 739 N.E.2d 649, 651, 656 (Ind. 2000). Corcoran appealed the sentence, and the Indiana Supreme Court remanded because the Allen Superior Court might have considered improper aggravating factors. *Id.* at 657-58. The Allen Superior Court resentenced Corcoran to death but this time afforded "medium weight" to the mitigating factor of being under the influence of mental or emotional disturbances during the crime based on the expert opinions that he suffered paranoid personality disorder or schizotypal personality disorder. *Corcoran v. State*, 774 N.E.2d

495, 498-99 (Ind. 2002). The Indiana Supreme Court affirmed this sentence on appeal, despite Corcoran's emphasis on the significance of his mental health. *Id.* at 501-02.

The Indiana Supreme Court ordered Corcoran to file any petition for post-conviction relief by September 9, 2003. *Corcoran v. State*, 820 N.E.2d 655, 657 (Ind. 2005). Corcoran declined, but counsel requested competency proceedings on the basis that he was incompetent to waive post-conviction proceedings. *Id.* The Allen Superior Court held a hearing, and three mental health experts presented by Corcoran's counsel, including Dr. Parker and Dr. Kaplan, opined that Corcoran suffered from paranoid schizophrenia. *Id.* at 660. According to the experts, Corcoran had recurring delusions that correctional officials tortured him through the use of an ultrasound machine. *Id.* They opined that he could not make a rational decision regarding legal proceedings and that his decision to waive post-conviction proceedings was "premised on his desire to be relieved of the pain that he believes he experiences as a result of his delusions." *Id.* They further opined that his decision to waive post-conviction review could not be rational if it was based on his irrational delusions. *Id.* However, Dr. Parker also opined that Corcoran was aware of the status of his case, his death sentence, the relevant events, and the positions of counsel. *Id.* at 661. Further, Dr. Kaplan opined that Corcoran was aware that waiving post-conviction review would result in his execution. *Id.*

At this hearing, Corcoran testified:

> See, I want to waive my appeals because I am guilty of murder. I think that I should be executed for what I have done and not because I am supposedly tortured with ultrasound or whatever. I am guilty of murder.

> I should be executed. That is all there is to it. That is what I believe. I believe the death penalty is a just punishment for four counts of murder, and I believe that I should be executed since I am guilty of four counts of murder.

Id. at 660-61. The State attorney and the judge each questioned and confirmed his understanding of the legal proceedings and his position, including that post-conviction proceedings could be his last attempt to challenge his sentence. *Id.* at 661-62. The Allen Superior Court found Corcoran sufficiently competent to waive post-conviction review. *Id.* at 658.

On the appeal of the competency determination, the Indiana Supreme Court found substantial evidence to support that Corcoran was "able to appreciate the gravity of his legal position and the consequences of his choice to waive further post-conviction review" and to support the "determination that Corcoran made his choice knowingly, voluntarily, and intelligently." *Id.* at 662. The Indiana Supreme Court found Corcoran's express denial that his delusions motivated him to waive post-conviction review and his reasoning that his death sentence was appropriate for his crimes to be particularly persuasive in declining to find that the Allen Superior Court's determination was clearly contradicted by the evidence. *Id.* at 661. During the pendency of this appeal, Corcoran decided to pursue a petition for post-conviction relief, which the State courts denied as untimely. *Corcoran v. State*, 845 N.E.2d 1019 (Ind. 2006); *Corcoran v. State*, 827 N.E.2d 542 (Ind. 2005).

In 2005, Corcoran initiated federal habeas proceedings in this court. *Corcoran v. Buss*, 483 F. Supp. 2d 709, 716 (N.D. Ind. 2007). This court granted habeas relief on

grounds not relevant here but rejected the argument that the State courts erred by finding Corcoran competent to waive post-conviction review. *Id.* at 729-34. This court noted that the Indiana Supreme Court applied the standard set forth in *Dusky v. United States*, 362 U.S. 402 (1960) in which the U.S. Supreme Court held that a defendant is competent to stand trial if "he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and has a rational as well as factual understanding of the proceedings against him." *Id.* at 729-30. It also noted reliance on the standard in *Rees v. Peyton*, 384 U.S. 312 (1966), in which the U.S. Supreme Court held that a capital defendant may withdraw a petition for certiorari only after it is determined whether "he has capacity to appreciate his position and make a rational choice with respect to continuing or abandoning further litigation or on the other hand whether he is suffering from a mental disease, disorder, or defect which may substantially affect his capacity in the premises." *Id.* at 730. This court recounted the evidence presented at the competency hearing and the Indiana Supreme Court's reasoning for affirming the competency finding. *Id.* at 729-33. This court found that Corcoran's arguments merely amounted to a request to reweigh the evidence. *Id.* at 733. It concluded that the Indiana Supreme Court fully confronted the competency issue and that its opinion was "thorough, thoughtful, and reasonable." *Id.* at 733-34.

On appeal, the Seventh Circuit affirmed the ruling on the competency argument, reiterating that the Indiana Supreme Court carefully considered the evidence from the competency hearing. *Corcoran v. Buss*, 551 F.3d 703, 713-14. (7th Cir. 2008). It added that preferring death to life imprisonment is not per se irrational. *Id.* Though the federal

habeas case was appealed and remanded on multiple occasions thereafter, the Seventh Circuit's ruling on this argument remained intact. *Corcoran v. Wilson*, 651 F.3d 611, 613 (7th Cir. 2011); *Corcoran v. Buss*, 2013 WL 140378, at *6 (N.D. Ind. Jan. 10, 2013). The initial habeas case concluded only when the U.S. Supreme Court denied certiorari in March 2016. *Corcoran v. Neal*, 577 U.S. 1237 (2016).

Corcoran's legal proceedings laid dormant for more than eight years when the State of Indiana filed a motion to set an execution date with the Indiana Supreme Court on June 26, 2024. *Corcoran v. State*, 240 N.E.3d 701 (Ind. 2024). Corcoran opposed an execution date on the basis that he was not competent to be executed, but, on September 11, 2024, the Indiana Supreme Court set an execution date for December 18, 2024, suggesting that Corcoran's competency argument was more appropriately raised in a successive petition for post-conviction relief. *Id.*

On November 15, 2024, Corcoran's counsel[2] filed a successive petition for post-conviction relief, asserting that Corcoran was not competent to be executed. ECF 1-1 at 3-7. In the accompanying memorandum,[3] counsel briefly addressed Corcoran's mental health before trial and at trial, and they recounted the evidence presented at the post-conviction competency hearing in 2003. With respect to Corcoran's mental condition at the present date, counsel offered the following:

---

[2] Given the disagreements between Corcoran and his counsel on whether to pursue a successive petition, the court finds it necessary to distinguish between them at various points in this order.

[3] In 24S-SD-222, Corcoran's counsel filed two successive petitions for post-conviction relief each asserting one claim with accompanying memoranda. Though they appear to have filed the wrong memorandum in this habeas case (ECF 1-1 at 8-23), the relevant memorandum, quoted in the block text below, is available on the State court docket.

> Now in 2024, Mr. Corcoran continues to suffer the debilitating symptoms of his paranoid schizophrenia. As he has for twenty years, he experiences auditory hallucinations, psychosis, and the ever-present delusions regarding the ultrasound machine he believes the prison guards are torturing him with and his sleep disorder. For instance, records from the Department of Correction will establish that he has received psychotropic medications to treat the symptoms of schizophrenia for two decades; specifically, Geodon, Haldol, Navane, and Cogentin.
>
> Although the Indiana Department of Corrections has attempted medicating him, his illness has proven to be resistant to treatment, and nothing during his incarceration has cured him of his paranoid schizophrenia. As recently as March 1, 2024, treating correctional personnel noted:
>
> > Patient then began sharing information about what he believes to be an ultrasonic machine here at ISP that can control his and others thoughts, sleep, voice, etc. Patient reports it is 'top secret' but it bothers him 'endlessly all day.' Patient reports the machine does put him to sleep at night. Patient stated 'others' think I'm delusional but I know its here.' Writer inquired if patient ever recognizes his own thoughts as delusional, patient avoided the question. ...Patient denies MH symptoms and the expressed delusions are the only observable concern."
>
> In short, Mr. Corcoran's longstanding and documented mental illness continues to torment him as it did at the time of the 1997 offense.

As exhibits, counsel attached the four-page psychotherapy session record from which they quoted and a thirty-page document, titled, "*A Whistle-blower Report: Electronic Harassment*," written by Corcoran in June 2024. ECF 1-1 at 170-99, 206-10. In this book, Corcoran elaborates on a conspiracy theory that government officials use secret technology to surveil and control individuals, including himself. *Id.* at 170-99. It also includes sections in which Corcoran demonstrates his extensive knowledge of electronics, explaining the frequency and modulation of radio waves, piezoelectric effects, transducers, and oscillators. *Id.* In the reply brief to the Indiana Supreme Court,

counsel also attached affidavits from trial counsel attesting that they received opinions from medical experts in 1999 indicating that Corcoran was not competent to stand trial but that they did not receive them in time to request a competency hearing. *Id.* at 200-05.

On November 22, 2024, Corcoran submitted a handwritten affidavit that he prepared without assistance from counsel, which reads as follows:

1. I am the same Joseph Edward Corcoran who was convicted in Allen County in 1999 of four counts of murder and sentenced to death. I am the same Joseph Edward Corcoran who has a very extensive appeal history. Having lost all appeals this Court has issued a death warrant to be carried out December 18, 2024, before sunrise.

2. My assigned counsel has petitioned this Court on my behalf. They seek to further litigate this case. Their goal, which was explained to me by counsel, is to delay any and all executions through endless litigation. They hope to set a precedent so all future death penalty cases can be endlessly litigated effectively putting an end to all executions.

3. I, Joseph Edward Corcoran, do not wish to litigate my case further. I am guilty of the crime I was convicted of, and accept the findings of all the appellate courts. The long drawn out appeal history has addressed all the issues I wished to appeal, such as the issue of competency. Therefore, I am hereby making this statement to the Court through this affidavit: I do not wish to proceed with more and/or endless litigation. Thus, I urge this Court not to accept my counsel's motion and petition to litigate further.

4. I understand that if this Court rejects my counsel's petition, the death warrant will be carried out. I will then be put to death for the heinous crime I committed. I understand that the execution will end my life. I understand medically my heart will stop and all brain activity will cease. I do not know, however, what will happen metaphysically. (But neither does anyone else.) I understand the execution, in the interest of judgment, serves as both a punishment and a deterrent.

5. I, Joseph Edward Corcoran, give this affidavit to the Court of my own free will. I was not coerced into making this statement, nor was I promised anything. I remind this Court that my competence to waive my appeals has been adjudicated throughout the extensive appeal

> process. Therefore, of my own free will and completely voluntarily, without coercion or promise of anything, being adjudicated competent, withdraw the motion counsel filed on my behalf. I do not wish to litigate further. However, if this Court refuses to withdraw the motion outright, I ask this Court to reject it on the basis that I, the appellant, have no desire nor wish to engage in further appeals or litigation whatsoever.

Id. at 163-66.

On December 10, 2024, the Indiana Supreme Court denied Corcoran authorization to pursue a successive post-conviction petition. *Corcoran v. State*, 2024 WL 5052384 (Ind. Dec. 10, 2024). The Indiana Supreme Court noted that successive petitions required authorization from an appellate court before they could be litigated in the lower courts and that such authorization would be granted "if the petitioner establishes a reasonable possibility that the petitioner is entitled to relief." *Id.* at 9. The Indiana Supreme Court first considered whether the petition was properly before it given that Corcoran refused to sign it. *Id.* at 10-11. Under Indiana law, the petitioner must authorize a post-conviction petition unless they are incompetent to do so. *Id.* at 10. The Indiana Supreme Court noted that Corcoran's counsel substantially relied on the evidence considered at the 2004 competency hearing and argued that Corcoran remained as incompetent now as he was then. *Id.* The Indiana Supreme Court observed that it had already found Corcoran competent to waive post-conviction review on this evidence and that the Seventh Circuit had described its analysis as careful. *Id.* Because Corcoran competently declined to authorize a successive petition, so too did the Indiana Supreme Court. *Id.* at 11.

The Indiana Supreme Court also considered the merits of the claim that Corcoran was not competent to be executed and found that counsel had not made a substantial threshold showing that his mental illness prevented him from rationally understanding the reason for his impending execution. *Id.* at 12-15. The Indiana Supreme Court cited Corcoran's recent affidavit and found it consistent with Corcoran's statements and the other evidence presented at the 2004 competency hearing. *Id.* at 12-13. The Indiana Supreme Court noted that counsel had submitted new evidence only for the purpose of showing that Corcoran remained as incompetent as he was in 2004. *Id.* at 13. The Indiana Supreme Court distinguished Corcoran's understanding of his execution from the *Panetti* petitioner's understanding by observing that Panetti believed that the Texas's stated reason was a sham. *Id.* It found that, while some evidence suggested that Corcoran was irrational and delusional in certain respects, no evidence suggested that Corcoran was delusional with respect to his execution. *Id.*

As an analogous case, the Indiana Supreme Court relied on *Timberlake v. State*, 858 N.E.2d 625 (Ind. 2006), in which Timberlake similarly sought to demonstrate his incompetency for execution based on his schizophrenic delusions that the government controlled, monitored, and tortured people through a secret machine. *Corcoran,* 2024 WL 5052384 at 14. The Indiana Supreme Court noted that Dr. Parker, the same expert who testified in Corcoran's competency hearing in 2004, testified that, though Timberlake was delusional and severely mentally ill, he had the mental capacity to understand his imminent execution and the reasons for it. *Id.* Based on this testimony, the Indiana Supreme Court denied Timberlake leave to pursue a successive petition. *Id.*

The Indiana Supreme Court found that counsel had similarly established Corcoran's severe mental illness but fell short of demonstrating that his understanding of his execution was irrational. *Id.*

The Indiana Supreme Court further acknowledged that the standards for waiving post-conviction review and for competency to be executed are not identical but noted that their 2005 decision affirming the post-conviction competency determination included a finding that Corcoran's mental ability did not interfere with his ability to understand the reasons for his execution. *Id.* The Indiana Supreme Court found no evidence suggesting that Corcoran's understanding had changed and found no substantial threshold showing of incompetency to be executed. *Id.*

PROCEDURAL DEFAULT

The court considers whether the Indiana Supreme Court's rejection of the successive petition for lack of authorization by Corcoran constitutes procedural default. "[A] procedural default [bars] consideration of a federal claim on either direct or habeas review [when] the last state court rendering a judgment in the case clearly and expressly states that its judgment rests on a state procedural bar." *Harris v. Reed*, 489 U.S. 255, 263 (1989). "Accordingly, [the court] will not entertain questions of federal law in a habeas petition when the state procedural ground relied upon in the state court is independent of the federal question and adequate to support the judgment." *Lee v. Foster*, 750 F.3d 687, 693 (7th Cir. 2014). "An independent state ground will be found when the court actually relied on the procedural bar as an independent basis for its

disposition of the case." *Id.* "A state law ground is adequate when it is a firmly established and regularly followed state practice at the time it is applied." *Id.*

Here, the Indiana Supreme Court expressly denied authorization to pursue a successive petition because Corcoran, who it found competent, did not authorize it. The verification requirement on which the Indiana Supreme Court relied is set forth in Section 3 of the Indiana Rules of Post-Conviction Remedies. As acknowledged by the Indiana Supreme Court and Corcoran here, the standard for competency to waive post-conviction review is a separate, though potentially overlapping, question than the standard for competency to be executed.

The court is also aware of a single instance in which the Indiana Supreme Court allowed a petitioner to proceed without complying with the verification requirement: *Isom v. State*, 170 N.E.3d 623, 632 (Ind. 2021). Though the Indiana Supreme Court issued only a summary order in January 2017, Isom's petition is distinguishable from Corcocan's successive petition; Isom initially signed but did not verify his petition due to mere inadvertence, his subsequent refusal to verify was a consequence of his desire for new counsel, and he consistently disavowed any intent to waive post-conviction review. *Isom v. State*, 45S00-1508-PD-508 (Ind. filed Aug. 31, 2015).[4] Isom credibly argued that his initial offering substantially complied with the verification requirement, but the same cannot be said for Corcoran. The failure to verify the post-conviction

[4] For these details, the court relies on Isom's appellate brief filed on September 27, 2016.

petition thus appears to be an adequate and independent State ground for procedural bar.

Further, the Indiana Supreme Court's consideration of the merits of the competency to be executed claim does not undermine the lack of verification as a basis for procedural default. *See Harris*, 489 U.S. at 264 n.10 ("[A] state court need not fear reaching the merits of a federal claim in an alternative holding. By its very definition, the adequate and independent state ground doctrine requires the federal court to honor a state holding that is a sufficient basis for the state court's judgment, even when the state court also relies on federal law."). Moreover, "a federal habeas court is not the proper body to adjudicate whether a state court correctly interpreted its own procedural rules, even if they are the basis for a procedural default."[5] *Johnson v. Foster*, 786 F.3d 501, 508 (7th Cir. 2015). That said, this court and the Seventh Circuit carefully reviewed the Indiana Supreme Court's analysis in the prior habeas case and found it to be more than adequate. The Indiana Supreme Court's most recent analysis incorporated its earlier analysis and reasonably found that the new evidence offered by Corcoran's counsel was merely consistent with its earlier understanding of Corcoran's mental condition. Therefore, the court cannot grant habeas relief because the claim that

[5] *Johnson* further noted exceptions to this rule in instances of "obvious subterfuge to evade consideration of a federal issue" or a record where it was "clear that the claim had been properly raised." 786 F.3d at 508 n.7. But, here, the Indiana Supreme Court considered the underlying federal claim, and while Corcoran's counsel reasonably argued that they had properly raised the *Ford/Panetti* claim, his competency to waive the opportunity to seek authorization for a successive petition was reasonably disputed by the State.

Corcoran is incompetent to be executed is procedurally defaulted. Nevertheless, for the sake of completeness, the court will consider the merits of the claim.

STANDARD OF REVIEW

"Federal habeas review . . . exists as a guard against extreme malfunctions in the state criminal justice systems, not a substitute for ordinary error correction through appeal." *Woods v. Donald*, 575 U.S. 312, 316 (2015).

> An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—
>
> > (1) 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
> >
> > (2) 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.

28 U.S.C. § 2254(d).

> [This] standard is intentionally difficult to meet. We have explained that clearly established Federal law for purposes of §2254(d)(1) includes only the holdings, as opposed to the dicta, of this Court's decisions. And an unreasonable application of those holdings must be objectively unreasonable, not merely wrong; even clear error will not suffice. To satisfy this high bar, a habeas petitioner is required to show that the state court's ruling on the claim being presented in federal court was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement.

Woods, 575 U.S. at 316. To warrant relief, a state court's decision must be more than incorrect or erroneous; it must be objectively unreasonable. *Wiggins v. Smith*, 539 U.S. 510, 520 (2003). "A state court's determination that a claim lacks merit precludes federal

habeas relief so long as fairminded jurists could disagree on the correctness of the state court's decision." *Harrington v. Richter*, 562 U.S. 86, 101 (2011).

However, "[w]hen a state court's adjudication of a claim is dependent on an antecedent unreasonable application of federal law, the requirement set forth in § 2254(d)(1) is satisfied." *Panetti v. Quarterman*, 551 U.S. 930, 953 (2007). "A federal court must then resolve the claim without the deference AEDPA otherwise requires." *Id.*

PRECEDENTIAL SUPREME COURT CASES

As detailed above, to obtain habeas relief, Corcoran must demonstrate that the State court decision "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." 28 U.S.C. § 2254(d)(1). Consequently, the court will detail the *Ford/Panetti* line of opinions issued by the Supreme Court.

Ford v. Wainwright, 477 U.S. 399 (1986)

In 1974, Ford was sentenced to death. In 1982, Ford began to experience delusions while in prison. *Id.* at 401. Ford sought the assistance of a psychiatrist, who evaluated Ford for fourteen months and concluded in 1983 that Ford suffered from a mental condition resembling paranoid schizophrenia that substantially affected his "present ability to assist in the defense of his life." *Id.* at 402-03. Another physician examined Ford, who made statements such as, "I know there is some sort of death penalty, but I'm free to go whenever I want because it would be illegal and the executioner would be executed," and, ""I can't be executed because of the landmark case. I won. *Ford v. State* will prevent executions all over." *Id.* at 403. The physician

concluded that Ford did not understand that he was being executed or the connection between his offense of murder and the death penalty. *Id.*

Ford initiated the Florida procedure for competency determinations for condemned inmates. *Id.* Pursuant to that procedure, the Governor appointed three psychiatrists, who jointly interviewed Ford for thirty minutes and concluded that Ford understood the death penalty and the reasons for imposing it on him. *Id.* at 403-04. In April 1984, the Governor, without explanation, signed a death warrant for Ford. *Id.* at 404. Though Ford also submitted written materials, the Governor did not indicate that he had considered them. *Id.* Ford unsuccessfully sought an evidentiary hearing in State court before filing a federal habeas petition. *Id.*

On habeas appeal, the Supreme Court examined the common law and invoked the evolving standards of decency to hold, "The Eighth Amendment prohibits the State from inflicting the penalty of death upon a prisoner who is insane." *Id.* at 406-10. It then considered the adequacy of the Florida procedure used to safeguard this constitutional right. *Id.* at 413-16. The Supreme Court found the procedure to be deficient because: (1) it "preclude[d] the prisoner or his counsel from presenting material relevant to his sanity or bar[red] consideration of that material by the factfinder;" (2) it failed "to afford the prisoner's representative any opportunity to clarify or challenge the state experts' opinions or methods;" and (3) Florida placed "the decision wholly within the executive branch." *Id.*

In closing, the Supreme Court disavowed any suggestion that the Constitution required a "full trial on the issue of sanity" but left it to the States to develop

appropriate procedures. *Id.* at 416-18. It further observed that "[i]t may be that some high threshold showing on behalf of the prisoner will be found a necessary means to control the number of nonmeritorious or repetitive claims of insanity." *Id.* In his concurrence,[6] Justice Powell echoed these sentiments as follows:

> Second, petitioner does not make his claim of insanity against a neutral background. On the contrary, in order to have been convicted and sentenced, petitioner must have been judged competent to stand trial, or his competency must have been sufficiently clear as not to raise a serious question for the trial court. The State therefore may properly presume that petitioner remains sane at the time sentence is to be carried out, and may require a substantial threshold showing of insanity merely to trigger the hearing process.
>
> Finally, the sanity issue in this type of case does not resemble the basic issues at trial or sentencing. Unlike issues of historical fact, the question of petitioner's sanity calls for a basically subjective judgment. And unlike the determination of whether the death penalty is appropriate in a particular case, the competency determination depends substantially on expert analysis in a discipline fraught with "subtleties and nuances." This combination of factors means that ordinary adversarial procedures—complete with live testimony, cross-examination, and oral argument by counsel—are not necessarily the best means of arriving at sound, consistent judgments as to a defendant's sanity.
>
> We need not determine the precise limits that due process imposes in this area. In general, however, my view is that a constitutionally acceptable procedure may be far less formal than a trial. The State should provide an impartial officer or board that can receive evidence and argument from the prisoner's counsel, including expert psychiatric evidence that may differ from the State's own psychiatric examination. Beyond these basic requirements, the States should have substantial leeway to determine what process best balances the various interests at stake. As long as basic fairness is observed, I would find due process satisfied, and would apply the presumption of correctness of § 2254(d) on federal habeas corpus.

Id. at 425-27.

---

[6] In *Panetti*, the Supreme Court characterized Justice Powell's concurrence as the controlling opinion in *Ford*. 551 U.S. 930, 949 (2007).

Panetti v. Quarterman, 551 U.S. 930 (2007)

In 1995, Panetti was sentenced to death. *Id.* at 936. Before trial, he was assessed with "fragmented personality, delusions, and hallucinations," but the trial court found him competent to stand trial and to waive counsel. *Id.* Two months after sentencing, he was found incompetent to waive appointment of State habeas counsel, which suggested that his mental condition had deteriorated. *Id.* at 937. In October 2003, a county court set his execution for February 2004. *Id.* Counsel moved to initiate a competency determination proceeding, but the county court denied the motion without a hearing, and the Texas appellate court dismissed the appeal for lack of jurisdiction. *Id.* at 938.

Panetti then filed a federal habeas petition, and the district court stayed execution to allow the Texas courts to consider evidence of Panetti's mental state. *Id.* The county court selected two mental health experts without input from Panetti, and these experts concluded that he understood that he would be executed and had the ability to understand the reasons for it. The county court granted Panetti one week to file a response and then issued a short order finding that Panetti had failed to demonstrate his incompetency. *Id.* at 939-41. The federal district court denied habeas relief on the basis that "the Fifth Circuit test for competency to be executed requires the petitioner know no more than the fact of his impending execution and the factual predicate for the execution." *Id.* at 941-42.

The Supreme Court disagreed, concluding that the failure to provide Panetti with the procedures set forth in *Ford* was an unreasonable application of clearly established Supreme Court law and declined to apply AEDPA deference to the Texas

court decision. *Id.* at 948. In so concluding, the Supreme Court noted, "It is uncontested that petitioner made a substantial showing of incompetency."[7] *Id.* It then reasoned that the Texas court deprived Panetti of any means "to submit expert psychiatric evidence in response to the evidence that had been solicited by the state court." *Id.*

The Supreme Court also found that the Fifth Circuit's standard for competency was too restrictive on the basis that it treated a delusional belief system as irrelevant "if the prisoner knows the State has identified his crimes as the reason for his execution." *Id.* at 958. The Supreme Court implied that a proper standard should require an understanding of "the real interests the State seeks to vindicate" rather than merely "the State's announced reason" or "the fact of an imminent execution." *Id.* at 959. Put another way, "[a] prisoner's awareness of the State's rationale for an execution is not the same as a rational understanding of it." *Id.* The Supreme Court explained, "The critical question is whether a prisoner's mental state is so distorted by a mental illness that he lacks a rational understanding of the State's rationale for his execution. Or similarly put, the issue is whether a prisoner's concept of reality is so impaired that he cannot grasp the execution's meaning and purpose or the link between his crime and its punishment." *Madison v. Alabama*, 586 U.S. 265, 269 (2019) (articulating the *Panetti* competency standard).

[7] Later in the opinion, the Supreme Court found that Panetti had satisfied the substantial threshold showing, relying on two experts the day before the execution date and evidence of mental dysfunction considered in prior litigation. *Panetti v. Quarterman*, 551 U.S. 930, 950 (2007).

Madison v. Alabama, 586 U.S. 265 (2019)

After Madison killed a police officer in 1985, he was convicted of murder and sentenced to death. *Id.* at 269. In 2015 and 2016, Madison suffered major strokes and developed vascular dementia. *Id.* Madison then asked the county court for a stay of execution because he no longer understood the facts of his case or the nature of his conviction or sentence. *Id.* at 269-70. The county court heard from dueling experts, and Madison's expert opined that he understood execution as an abstract concept but did not comprehend the reason behind Alabama's effort to execute him. *Id.* at 270. He further opined that vascular dementia caused significant cognitive decline and that Madison had no independent recollection of the murder. *Id.* By contrast, Alabama's expert opined that Madison appeared to understand his legal situation and found no evidence of psychosis, paranoia, or delusion. *Id.* at 270-71. At a hearing, Alabama emphasized that Madison did not experience psychotic episodes or delusions, which the county court found persuasive in concluding that Madison had not demonstrated that he did not have a rational understanding of his execution or the reasons for it. *Id.* at 271. The county court also credited the testimony of the Alabama expert. *Id.* at 271-72. Madison then filed a federal habeas petition, which the Supreme Court applied AEDPA deference to the Alabama court decision and affirmed the denial of habeas relief on the basis that "neither *Panetti* nor *Ford* clearly established that a prisoner is incompetent to be executed because of a simple failure to remember his crime." *Id.* at 272.

In 2018, Alabama set an execution date, and Madison initiated another challenge in State court, contending that he had suffered further cognitive decline and that the

Alabama expert had since been suspended from practicing psychology. *Id.* at 273. The Alabama court declared him mentally competent, finding no substantial threshold showing of insanity. *Id.* at 273-74. Madison then appealed directly to the Supreme Court, allowing for de novo consideration of his claims rather than consideration subject to AEDPA deference. *Id.* at 274.

The Supreme Court considered: (1) "whether *Panetti* prohibits executing Madison merely because he cannot remember committing his crime;" and (1) "whether *Panetti* permits executing Madison merely because he suffers from dementia, rather than psychotic delusions." *Id.* at 274-75. It answered no to both questions, reasoning that "[w]hat matters is whether a person has the rational understanding *Panetti* requires—not whether he has any particular memory or any particular mental illness." *Id.* The Supreme Court held that "[i]n evaluating competency to be executed, a judge must therefore look beyond any given diagnosis to a downstream consequence." *Id.* at 279. It explained that "a delusional disorder can be of such severity—can so impair the prisoner's concept of reality—that someone in its thrall will be unable to come to grips with the punishment's meaning. But delusions come in many shapes and sizes, and not all will interfere with the understanding that the Eighth Amendment requires." *Id.*

The Supreme Court found the brief State court order to be ambiguous as to its reasoning and that the circumstances suggested that the State court had applied the incorrect standard for assessing competency. *Id.* at 280-83. The Supreme Court vacated the judgment of the State court and remanded for further proceedings, advising that the

sole competency question before the State court was "whether he can reach a rational understanding of why the State wants to execute him." *Id.* at 283.

DISCUSSION

Corcoran argues that he is entitled to habeas relief because he is incompetent to be executed. Corcoran contends that the AEDPA deference should not apply in this case because the Indiana courts required him to present his claim in a successive petition for post-conviction relief and because he must obtain authorization from the Indiana Supreme Court to further pursue it. He argues that this procedure allowed the Indiana Supreme Court to improperly conflate the standard for waiving post-conviction review with the standard for competency to be executed.

The court is not persuaded by this argument. The Indiana Supreme Court acknowledged that these standards were distinct and explained why it found its competency determination in 2005 relevant to its threshold determination this month. This explanation and its assessment of the new evidence were not unreasonable. Further, there is no reason to suspect that an assertion of incompetency would not have been similarly challenged if the Indiana courts had allowed him to file a successive petition without authorization from an appellate court. Additionally, no U.S. Supreme Court opinion clearly establishes that the threshold determination must be held in a particular manner or in a particular type of proceeding. This court also sees no inconsistency with the relevant U.S. Supreme Court opinions; to the contrary, the authorization requirement to pursue successive petitions is effectively a vehicle for threshold determinations where the petitioner must demonstrate that his claim has

some merit before he is allowed to proceed. At base, the court perceives no difference of constitutional magnitude between making this threshold determination before the Indiana Supreme Court or the Allen Superior Court. Nor does the court perceive such a difference between the State requirement that a petitioner show a reasonable possibility that the petitioner is entitled to relief or the constitutional requirement that petitioner make a substantial threshold showing of insanity. Moreover, the Indiana Supreme Court framed its ultimate conclusion using the constitutional standard rather than the State standard for successive petitions.

It also strikes the court that the standards used to adjudicate Corcoran's competency to waive post-conviction are more demanding than the standard for competency to be executed. Recall that the Indiana Supreme Court articulated the competency to waive post-conviction review standard as follows: "an individual is competent for purposes of trial if he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and has a rational as well as factual understanding of the proceedings against him." *Corcoran v. State*, 820 N.E.2d 655, 658-59 (Ind. 2005). It seems likely that, as a general matter, greater competency is required to understand ongoing criminal proceedings on serious charges than it is to understand the reasons for punishment. And even if the trial competency standard does not subsume the competency to be executed standard in every instance, it does so here. As the Indiana Supreme Court noted, it specifically found that Corcoran understood the

reasons for his execution in finding that Corcoran was competent to waive post-conviction review.[8]

Corcoran also argues that the Indiana Supreme Court unreasonably determined that counsel had not made a substantial threshold showing of insanity and made improper credibility determinations at the threshold stage. A more accurate characterization is that the Indiana Supreme Court acknowledged its prior credibility determinations in connection with its prior competency determination and found the new evidence consistent with those determinations. The U.S. Supreme Court has not delineated how a threshold determination should be made, but, to Corcoran's point, it logically follows that a threshold determination is something other than a hearing where credibility determinations are ordinarily made. But the Indiana Supreme Court here did not blatantly violate this principle by, for example, resolving a full-scale battle of the experts or a straightforward "he said she said" dispute based entirely on evidence that had been submitted for judicial review for the first time. Consequently, the court cannot find that the Indiana Supreme Court unreasonably applied clearly established federal law by making credibility determinations.

The court also cannot find that the Indiana Supreme Court unreasonably determined that counsel had not made a substantial threshold showing of insanity on

[8] Corcoran argues that the State court concocted barriers based on State-specific standards to "circularly deny" him an opportunity to present his competency claim to the lower courts. However, given the history of Corcoran's legal proceedings, the court does not find that the State court engaged in circular reasoning by requiring him to provide more compelling evidence to demonstrate his incompetency to waive post-conviction review and to be executed, such as a recent expert report that spoke directly to the Corcoran's competency or recent medical records showing mental deterioration.

behalf of Corcoran. As mentioned above, the U.S. Supreme Court has not instructed the lower courts on precisely how this standard should be applied by providing a list of elements or factors for consideration or by otherwise expounding on it. Instead, the U.S. Supreme Court has provided three examples of showings that satisfy this threshold determination: (1) in *Ford v. Wainwright*, the Supreme Court found that Florida should have provided Ford with a hearing because he had evidence that his mental condition had deteriorated in recent years and a recent evaluation in which an expert concluded that Ford did not understand his execution of the reasons for it; (2) in *Panetti v. Quarterman*, the Supreme Court found that Texas should have provided Panetti with a hearing because the fact that he had made a threshold showing was undisputed, but it further found Panetti had made the threshold showing based on the earlier finding that he was incompetent to waive appointment of State habeas counsel and recently obtained expert opinions; and (3) in *Madison v. Alabama*, the Supreme Court remanded the case for "renewed consideration of Madison's competency" because the Alabama threshold determination did not consider that a lack of rational understanding could be caused by dementia rather than delusions. In reaching this ruling, the Supreme Court considered evidence that Madison had recently suffered major strokes and been recently inflicted with vascular dementia and a recent expert report that Madison did not understand the reasons for his execution.

Unlike the petitioners in these cases, Corcoran has never been adjudicated incompetent; to the contrary, he was found competent in 2004 based on evidence that is substantially similar to the evidence presented to the Indiana Supreme Court this year.

Counsel did not provide evidence that Corcoran's mental condition has deteriorated since 2004, nor has he presented a recent expert assessment as to whether Corcoran understands his execution or the reasons for it; instead, Corcoran, on his own accord, submitted an affidavit attesting that he did have such an understanding. Further, there is no indication that the Indiana Supreme Court misconstrued "insanity" as defined by *Panetti* and clarified by *Madison*; instead, it squarely addressed the argument that Corcoran was only aware of the stated reasons for execution but did not rationally understand it.

Counsel also faults the Indiana Supreme Court for relying on Corcoran's affidavit due to his delusional behavior, but they cite no U.S. Supreme Court case suggesting that an individual's own statements should not be considered for purposes of competency. Counsel essentially argues that Corcoran knows precisely what to say in order to persuade courts that he is rational but that he does not truly believe it due to his delusional beliefs. However, assuming that Corcoran is merely imitating rationality, counsel concedes that it is an especially good imitation, so it is difficult to characterize the Indiana Supreme Court as unreasonable for relying on it. This is particularly true when no statement made by Corcoran this decade and no expert finding directly undermines Corcoran's rationality toward his execution.[9] Moreover, even this

[9] As mentioned above, it is not clear that the Indiana Supreme Court credited his affidavit for purposes of resolving the competency to be executed claim rather than merely assessing the newly submitted evidence. But, to the extent the Indiana Supreme Court did make a credibility determination, Corcoran's counsel has not provided clear and convincing evidence suggesting that this determination was incorrect, nor have they described what evidence they might present at an evidentiary hearing. The court considers the other relevant evidence submitted by counsel below.

purported imitation would have some probative value because persuasively imitating rationality for the purpose of influencing others itself requires a certain degree of rationality.

The court also cannot find that the State court acted unreasonably by considering the 2004 competency hearing as part of the threshold determination of insanity. In *Panetti*, the U.S. Supreme Court specifically noted that a State court had previously found Panetti incompetent, signaling that prior competency hearings are relevant to the question of whether an individual is competent to be executed. That seems even more true here, where substantial litigation occurred regarding that prior competency determination and when the new evidence and counsel's arguments indicate that Corcoran's mental condition has remained the same. It was not unreasonable to find that the evidence from the prior competency hearing was insubstantial given that it had already been considered and found insufficient.

Similarly, it was not unreasonable to conclude that the newly submitted evidence was insubstantial in terms of its volume and its significance. As new evidence, counsel submitted a four-page psychotherapy session record and a thirty-page document, titled, "A Whistle-blower Report: Electronic Harassment," written by Corcoran in June 2024, as well as two affidavits from trial counsel. The affidavits concern Corcoran's mental state at and shortly after trial and so predate the 2004 competency hearing. The psychotherapy record and Corcoran's writing were offered for the express purpose of establishing that Corcoran's mental condition remained as impaired as it was in 2004. The court further observes that, as far as conspiracy theories go, Corcoran's writing is

remarkably cogent and a reasonable effort at presenting an irrational theory in a rational way. His explanation of difficult-to-grasp electricity-related concepts further reinforces that he is not delusional or irrational in every respect.

The court also considers the psychiatric report completed by Angeline Stanislaus, M.D., on December 10, 2024. ECF 1-1 at 250-62. Because it was not submitted to the State courts, it is unclear whether this psychiatric report is properly before this court. *See Shinn v. Ramirez*, 596 U.S. 366, 382-84 (2022); 28 U.S.C. § 2254(e)(2). Setting that aside, the most relevant portion of the report reads as follows:

> [Corcoran's] DOC therapy records from 2023 and 2024 indicates that he is still very delusional and has no insight into his illness. His book published in 2024 clearly describes his delusional system which consists of being controlled by the DOC ultrasound machine, the voices and the torture from muscle spasms. Therefore, he currently remains seriously mentally ill due to his untreated psychotic symptoms. Due to his severe paranoid beliefs and his belief that mental health professionals will diagnose him with psychiatric illness due to their ignorance of the electronic surveillance system that exists, he will not cooperate with an evaluation from a psychiatrist of other mental health professional. He minimizes and covers up his symptoms.
>
> In the affidavit he filed in 2006 to the court, he denies all mental health symptoms and eloquently describes them as "stories" he made up. His writings are organized and well written. His ability to write and speak eloquently has served him well to cover up his mental health symptoms and psychosis. Dr. Parker noted in his testimony that in brief interviews he could easily cover up the symptoms and present as logical. However, when we look at the full picture longitudinally, we see the signs and symptoms of schizophrenia, which has influenced his illogical decision making.
>
> With regards to his November 2024 affidavit, he makes it sound like his decision to forgo any further litigation is logical. He states that in execution his heart will stop, and all brain activity will cease. This again ties into his delusion of the ultrasonic machine inserting and broadcasting his thoughts from his brain.

ECF 1-1 at 261. Notably, the expert report offers no conclusions that directly address the credibility of Corcoran's recent affidavit or whether he currently has a rational understanding of his execution. Dr. Stanislaus posits that one of Corcoran's attestations "ties" into his delusions, but this accurate statement about what will happen to his body when he dies does not materially undermine that Corcoran understands the reasons for his execution.

In sum, the court finds that the sole habeas claim that Corcoran is incompetent to be executed is procedurally defaulted and without merit. Therefore, the court will deny the habeas petition pursuant to Rule 4 of the Section 2254 Rules Governing Habeas Cases. Corcoran also filed a motion to stay execution, which the court will deny as moot in light of this Rule 4 dismissal.

CERTIFICATE OF APPEALABILITY

Pursuant to Section 2254 Habeas Corpus Rule 11, the court must grant or deny a certificate of appealability. To obtain a certificate of appealability under 28 U.S.C. § 2253(c), the petitioner must make a substantial showing of the denial of a constitutional right by establishing "that a reasonable jurist could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Because this case involves the death penalty, the court will grant a motion for a certificate of appealability on the issue of whether the State court unreasonably determined that Corcoran or his counsel had failed to

demonstrate a substantial threshold showing of insanity as required by *Panetti v. Quarterman*, 551 U.S. 930 (2007). The court will also grant a motion for leave to appeal in forma pauperis.

For these reasons, the court DENIES the motion to stay execution (ECF 3); DENIES the habeas corpus petition (ECF 1); GRANTS a certificate of appealability pursuant to Section 2254 Habeas Corpus Rule 11; GRANTS leave to appeal in forma pauperis; and DIRECTS the clerk to enter judgment in favor of the Respondent and against the Petitioner.

SO ORDERED on December 13, 2024

s/ Jon E. DeGuilio
JUDGE
UNITED STATES DISTRICT COURT

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted December 16, 2024
Decided December 16, 2024

Before

MICHAEL B. BRENNAN, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 24-3259

TAHINA CORCORAN, as next friend on behalf of JOSEPH E. CORCORAN,
Petitioner-Appellant,

v.

RON NEAL,
Respondent-Appellee.

Appeal from the United States District Court for the Northern District of Indiana, South Bend Division.

No. 3:24-CV-970-JD

Jon E. DeGuilio,
Judge.

O R D E R

Joseph E. Corcoran was convicted of quadruple murder and sentenced to death in 1999. Before us is an appeal of the district court order denying a petition for a writ of habeas corpus under 28 U.S.C. § 2254(d), and a motion to stay his December 18, 2024, execution. This order assumes familiarity with:

- the district court's December 13, 2024, opinion and order denying the habeas petition and the motion to stay execution;

- the Indiana Supreme Court's December 10, 2024, opinion declining to authorize the petitions for successive post-conviction relief and denying the requests for stay of execution; and
- the previous decisions of this court, district courts that have ruled on Corcoran's cases, and other previous rulings by the Indiana state courts.

I. Standing

The habeas statutes provide for next-friend standing. 28 U.S.C. § 2242. But a next friend may not file a petition for writ of habeas corpus on behalf of a detainee if that detainee could file the petition himself. *Wilson v. Lane*, 870 F.2d 1250, 1253 (7th Cir. 1989) (citation omitted). Citing various behaviors and writings of Corcoran, his wife submits that he is not competent to sign an application for habeas corpus and that she and his attorneys have standing as Corcoran's next friend.

The district court found that Corcoran's wife and his attorneys have next-friend standing to bring this habeas challenge on his behalf. We are somewhat uncomfortable with that conclusion.

The standard for competency to waive habeas proceedings is that the detainee "has capacity to appreciate his position and make a rational choice with respect to continuing or abandoning further litigation or on the other hand whether he is suffering from a mental disease, disorder, or defect which may substantially affect his capacity in the premises." *Rees v. Peyton*, 384 U.S. 312, 314 (1966) (per curiam).

Corcoran has submitted a detailed sworn notarized affidavit that articulately sets forth his desire not to pursue federal relief.[1] His composition and filing of that affidavit undercuts an assertion of incompetency to pursue a habeas petition. We seriously question whether Corcoran's wife and attorneys have proved that he is incompetent to litigate himself. If not, next-friend status is not proper for him.

[1] This affidavit is dated November 21, 2024, is reproduced on pp. 9–10 of the district court's opinion and order, and is Attachment F of the appendix to the habeas petition as DE 1 in the district court.

Still, given the expedited manner in which we consider this appeal,[2] we think it prudent to reach the petition's merits.

II. Merits

A. Habeas Corpus Petition

The habeas petition under 28 U.S.C. § 2254(d) on Corcoran's behalf centers on his competency to be executed. The district court reviewed the evidence as to Corcoran's mental condition, both earlier in this case and recently submitted. Dist. Ct. DE 20 at 7–10. This evidence includes, among other items, a booklet written by Corcoran with conspiratorial theories about the government surveilling and controlling him,[3] as well as Corcoran's handwritten affidavit referenced above.

Title 28 U.S.C. § 2254(d) provides:

> An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—
>
> > (1) 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
> >
> > (2) 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.

We conclude that Corcoran by his next friend has not satisfied either of these subsections.

---

[2] This appeal was docketed three days ago on December 13, 2024. The parties submitted expedited briefing on December 14 and 15, 2024, and we issue this order on December 16, 2024.

[3] This booklet is Attachment H of the appendix to the habeas petition as DE 1 in the district court.

First, the Indiana Supreme Court's decision was not contrary to clearly established federal constitutional law. Its decision correctly identified the governing rule that the Eighth Amendment prohibits the execution of a prisoner who has lost his sanity after sentencing. Its decision also was not contrary to the requirement of competency elucidated in *Ford v. Wainwright*, 477 U.S. 399 (1986), *Panetti v. Quarterman*, 551 U.S. 930 (2007), and *Madison v. Alabama*, 586 U.S. 265 (2019).

Corcoran's next friend tries to show a "contrary-to" application by arguing that federal courts have not required competency-to-be-executed claims to be subject to the successive-petition-authorization procedure, yet Indiana courts require successive-petition authorization to proceed to a full evidentiary hearing on a claim under *Ford*. But we are not persuaded by this reasoning, as Indiana courts are not required to adopt federal collateral review procedures.

We do not conclude that the Indiana Supreme Court in its December 10, 2024, decision unreasonably applied controlling law about incompetency to be executed. That court correctly identified the governing legal rule. So, the petitioner must show that the court applied that rule unreasonably to the facts. Yet, Corcoran's next friend has not met this requirement. The Indiana Supreme Court's decision (including at pp. 24–27) did not unreasonably apply Supreme Court law when holding that the petition did not make a substantial threshold showing under *Ford.* We also are not persuaded by an argument that Corcoran is merely imitating rationality, and thus fails the competency requirement elucidated in *Ford*, *Panetti*, and *Madison*. The Indiana Supreme Court is not unreasonable for relying on Corcoran's affidavit and reaching the conclusions that it did. The district court correctly recognized this in its well-reasoned opinion and order at pp. 23–30.

Second, the Indiana Supreme Court's decision did not rest on an unreasonable determination of the facts. Our review of the state court's factual findings is highly deferential.

The next friend argues about the weight they believe the state court should have given certain evidence, whether it is Corcoran's November 2024 affidavit or a new expert report by Dr. Angeline Stanislaus. But arguments as to weight are properly made under 28 U.S.C. § 2254(d)(1), not (d)(2). *See Lopez v. Smith*, 574 U.S. 1, 8 (2014).

Under 28 U.S.C. § 2254(e)(1), a determination of a factual issue is presumed correct. The petitioner must rebut that presumption by clear and convincing evidence.

Corcoran's next friend has not done so here. Corcoran was found competent in 2004, and he has not ever been adjudicated incompetent. The record does not show evidence of Corcoran's mental competency degrading since that earlier finding of competency. There is also not a recent evaluation that Corcoran does not understand the reasons for his execution. Indeed, Corcoran's affidavit attests that he does understand his execution and the reasons for it. The state court made no unreasonable factual determinations.

Because there has not been an unreasonable application of federal law as determined by the Supreme Court of the United States, and not been an unreasonable determination of the facts in light of the evidence presented in this lengthy litigation, we agree with the district court that the habeas petition should be denied.

B. Motion to Stay

To be granted a stay, Corcoran's next friend must have made a strong showing that he is likely to succeed on the merits, that Corcoran will be irreparably injured absent a stay, that the issuance of the stay will not substantially injure the other parties interested in the proceeding, and that granting a stay is in the public interest. *Nken v. Holder*, 556 U.S. 418, 434 (2009). We review the district court's decision on a motion to stay for an abuse of discretion. *Bourgeois v. Watson*, 977 F.3d 620, 628 (7th Cir. 2020) (citation omitted). The Supreme Court has repeatedly emphasized that "[l]ast-minute stays [of execution] should be the extreme exception, not the norm." *Bucklew v. Precythe*, 587 U.S. 119 (2019).

In reviewing the district court's decision to deny the motion to stay, we focus largely on the first factor. As the stay's proponent, Corcoran's next friend must make a "strong showing" of a likelihood of success on the merits of the underlying claim. *Nken*, 556 U.S. at 434. We have described above the reasons why Corcoran's next friend has failed to make that strong showing in this petition. Corcoran's next friend obviously satisfies the second stay factor of irreparable harm, but the third and fourth factors are more in equipoise. We do note that on the third factor, "equity must be sensitive to the State's strong interest in enforcing its criminal judgments without undue interference from the federal courts." *Hill v. McDonough*, 547 U.S. 573, 584 (2006). And on the fourth factor, all share in the timely enforcement of Corcoran's sentence.

Under the *Nken* factors, we agree with the district court that a stay is not warranted.

* * *

We agree in material part with the district court's decision here to deny the habeas corpus petition. That court and the Indiana Supreme Court decisions have correctly resolved the questions raised by Corcoran's next friend.

For these reasons, the district court's judgment is AFFIRMED, and the motion to stay execution is DENIED.

LEE, *Circuit Judge*, dissenting. A federal court may grant habeas relief only if the state court's adjudication of the merits of the claim resulted in a decision that is: (1) "contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States"; or (2) "based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d). Because the Indiana Supreme Court unreasonably applied the well-established standard governing competency-for-execution articulated in *Ford v. Wainwright*, 477 U.S. 399 (1986); *Panetti v. Quarterman*, 551 U.S. 930 (2007); and *Madison v. Alabama*, 586 U.S. 265 (2019), I respectfully dissent. Given the time constraints, I will briefly summarize my reasons below.

The Indiana Supreme Court premised its ruling on Joseph Corcoran's competency to be executed on two grounds: (1) its 2005 decision affirming the state trial court's determination that Corcoran was competent to waive post-conviction relief; and (2) Corcoran's statements in his affidavit filed on November 21, 2024. *See Corcoran v. State*, – N.E.3d –, 2024 WL 5052384, at *12–14 (Ind. Dec. 10, 2024). In doing so, the court violated *Ford* and *Panetti* in two ways.

First, the court believed it had already decided Corcoran's competency for execution in 2005. *See id.* at *14 ("When concluding that Corcoran was competent to waive post-conviction remedies [in 2005], we concluded that he has a non-delusional understanding of these legal proceedings. And part of what we relied on was his 'reasoning that his death sentence is commensurate with the crime he committed (the conclusion to which both the original trial court jury and judge came).'") (citing *Corcoran v. State*, 820 N.E.2d 655, 661 (Ind. 2005)). But the competency standard the court used in 2005 was based on *Dusky v. United States*, 362 U.S. 402 (1960), and *Rees v. Peyton*, 384 U.S. 312 (1966), which considers a defendant's "capacity to appreciate his position and make a rational choice with respect to continuing or abandoning further litigation." *Rees*, 384 U.S. at 314. This is markedly different from the standard governing a prisoner's competency to be executed, which asks "whether a prisoner's mental state is so distorted by a mental illness that he lacks a rational understanding of the State's rationale for his execution." *Madison*, 586 U.S. at 269 (cleaned up). "Or similarly put, the issue is whether a prisoner's concept of reality is so impaired that he cannot grasp the execution's meaning and purpose or the link between his crime and its punishment." *Id.* (cleaned up).

In 2005, the Indiana Supreme Court held that "Corcoran's awareness of his legal position and his ability to formulate a rational justification for forgoing further post-

conviction review make him competent to waive such review under either *Rees* or *Dusky*." *Corcoran*, 820 N.E.2d at 662. By treating its 2005 decision as conclusive here, the Indiana Supreme Court effectively substituted the *Rees* standard in place of the *Ford/Panetti* standard.

The court's error is perhaps most apparent in the following statement: "Our determination that Corcoran could waive his post-conviction remedies included an analysis of whether his mental illness interfered with his ability to understand why the State was executing him. And now that a challenge to competency for execution is ripe, there is no indication that Corcoran's understanding of why he is to be executed has changed." *Corcoran*, 2024 WL 5052384, at *14. In *Panetti*, however, the United States Supreme Court was careful to note that "[a] prisoner's awareness of the State's rationale for an execution is not the same as a rational understanding of it." 551 U.S. at 959. In *Panetti's* parlance, the Indiana Supreme Court determined in 2005 that Corcoran had the capacity to understand the rationale for his execution, but it did not inquire (because it had no reason to) whether Corcoran had a rational understanding of it. And, indeed, to date, no court has conducted such an inquiry.

Putting aside the differing standards, the relevance of Corcoran's 2003 competency finding to the current inquiry is at best questionable. Twenty years have passed since that evaluation, and, as the Supreme Court had recognized, "[p]rior findings of competency do not foreclose a prisoner from proving he is incompetent to be executed because of his present mental condition." *Panetti*, 551 U.S. at 934. The Indiana Supreme Court, on the other hand, assumed that Corcoran's condition had not changed in the last two decades. *Corcoran*, 2024 WL 5052384, at *13 ("Virtually all the evidence the State Public Defender cites is the evidence we previously considered when determining Corcoran could waive post-conviction remedies."). But Petitioner has offered new evidence that Corcoran's severe paranoid schizophrenic delusions not only continue but also cause him to hide his condition from the world and feign sanity.[1]

[1] For example, in his recently published book, *Electronic Harassment: A Whistle-blower Report*, Corcoran states that he wants to show that his belief that prison officials are using an ultrasound machine to control him and others "is not a nut job conspiracy theory, but is basic electronics." DE 1, Appendix, Attachment H at 13 (181a). Later, he continues, "If a credentialled medical person says a man is mentally ill, but he says that he is the victim of electronic harassment, who would people be more likely to believe? So because of this the victimizer's cover is not seemingly backed up by medical science." *Id*. at 20 (188a).

This leads to the second point. To support its belief that Corcoran is competent to be executed and nothing has changed, the Indiana Supreme Court placed much stock in the statements Corcoran made in his November 21, 2024, affidavit. *See id.* at *12–14. But, because Corcoran filed his affidavit after briefing had concluded, the Indiana Supreme Court did so without providing defense counsel an opportunity to respond to it. This is precisely the lack of due process the Supreme Court condemned in *Ford* and *Panetti*. *See Ford*, 477 U.S. at 415 (noting that the state procedure did not allow a defendant to challenge or impeach the opinion of the state-appointed psychiatrists who deemed him competent); *Panetti*, 551 U.S. at 948 (noting that the state court reached its competency determination after failing to provide petitioner with "an adequate means by which to submit expert psychiatric evidence in response to the evidence that had been solicited by the state court").

The Indiana Supreme Court's reliance on Corcoran's untested affidavit is particularly troubling given that defense counsel's entire theory is premised on Corcoran's inability to rationally comprehend the reasons behind his execution and his efforts to hide his true motivations for seeking the death penalty. Indeed, the Supreme Court has found the law "clearly established" that "[o]nce a prisoner seeking a stay of execution has made a 'substantial threshold showing of insanity,' the protection afforded by procedural due process includes a 'fair hearing' in accord with fundamental fairness." *Panetti*, 551 U.S. at 949 (quoting 28 U.S.C. § 2254 and *Ford*, 477 U.S. at 426).[2]

For these reasons, I believe that the Indiana Supreme Court unreasonably applied the standard the Supreme Court announced in *Ford* and *Panetti* for evaluating a prisoner's competency to be executed. Given Corcoran's long, undisputed history of severe mental illness and the pervasiveness of his continuing delusions, as evidenced by his book and recent medical records, Corcoran is entitled to have at least one court assess his competency to be executed under the proper *Ford*/*Panetti* framework.

Turning to Petitioner's motion for a stay of execution, courts evaluating a stay must consider an applicant's likelihood of success on the merits and potential for irreparable injury, as well as injury to other parties and the public interest. *See Nken v.*

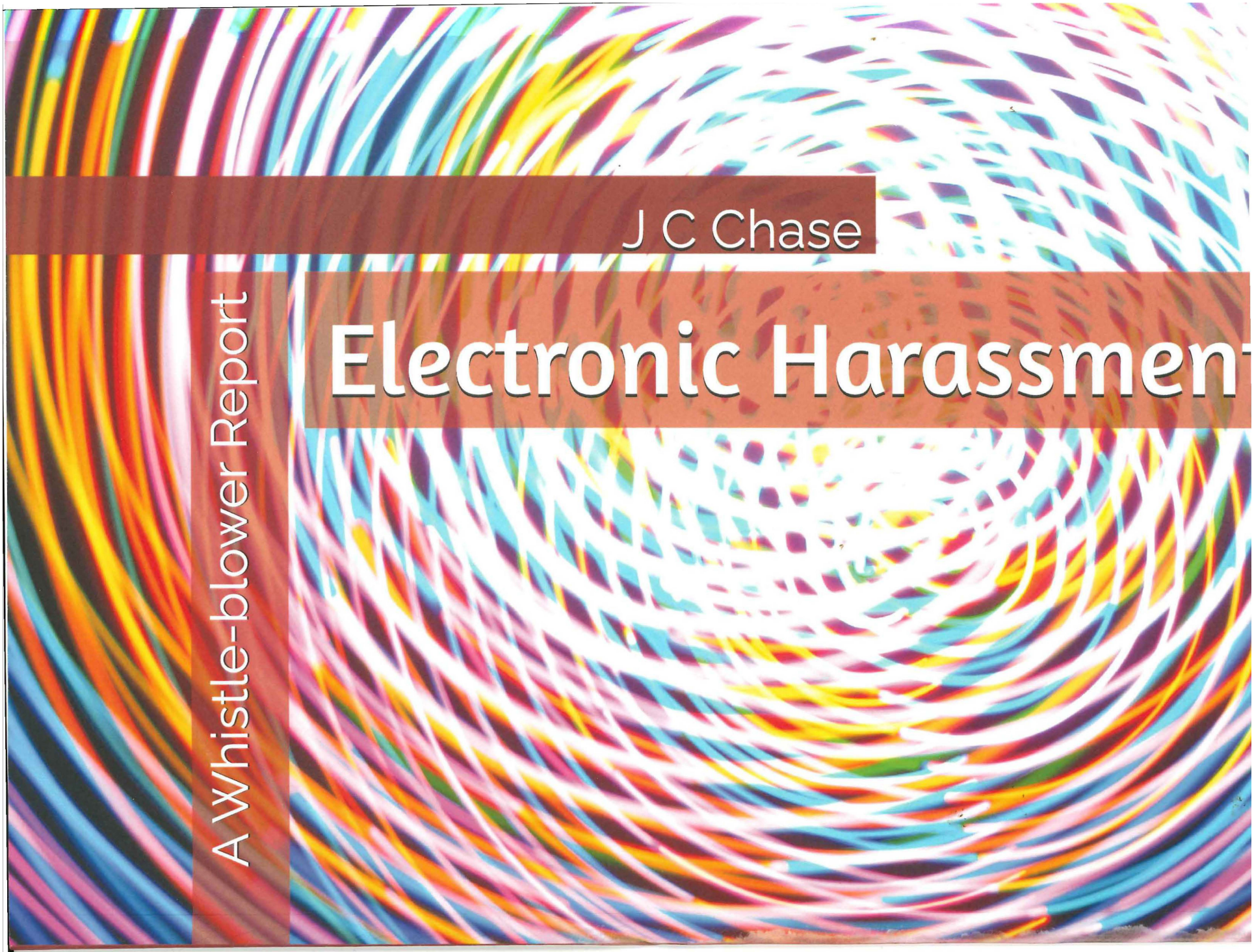
[2] It bears mentioning that Corcoran has recanted similarly unequivocal attestations of waiver. *See Corcoran*, 820 N.E.2d at 657. Because death is irrevocable, this history should lead us to view his current statements with a skeptical eye.

Holder, 556 U.S. 418, 434 (2009). Here, Petitioner has established a likelihood of success on her claim that the state court failed to provide an adequate hearing to determine Corcoran's competency to be executed. The record contains undisputed and extensive expert evidence of Corcoran's paranoid schizophrenia and the resultant pervasive delusions from which he has long suffered. When recognizing that gross delusions may render a prisoner incompetent to be executed, the Supreme Court in *Panetti* accepted observations by two experts and similarly "extensive evidence of mental dysfunction considered in earlier legal proceedings" to conclude that "the state court failed to provide petitioner [there] with the minimum process required by *Ford*." *Panetti*, 551 U.S. at 950. Here, too, Petitioner is likely to demonstrate a substantial threshold showing of insanity mandating a fair hearing under *Ford*.

Additionally, in a death-penalty case like this one, the equities of irreparable harm tip strongly in Petitioner's favor. While the harm to the State and the victims may be delay in the duly imposed sentence (a valid interest), the potential harm to Corcoran is experiencing the "barbarity of … mindless vengeance," which serves no public interest. *See Ford*, 477 U.S. at 410. Accordingly, I would grant Petitioner's motion for a stay so that the state court can evaluate Corcoran's competency to be executed as required by *Ford* and *Panetti*.[3]

For these reasons, I respectfully dissent.

[3] A couple of additional issues warrant mention. Regarding the district court's ruling as to procedural default, as I see it, the Indiana Supreme Court's determination regarding Corcoran's competency to waive post-conviction relief depends primarily on federal law or is interwoven with federal law. Accordingly, it does not rest on an independent and adequate state law ground. *See Richardson v. Lemke*, 745 F.3d 258, 269 (7th Cir. 2014). As to standing, the district court properly found that Tahina Corcoran has adequately shown that she is a proper next friend for the purposes of the preliminary stages of this habeas case. My colleagues' reliance on Corcoran's recent affidavit is problematic for the reasons I have explained. Thus, I would affirm that finding.



79a

ELECTRONIC HARRASSMENT

A Whistle-blower Report

J.C.Chase

July 2024

Contents

Introduction

At the outset I am going to bring to your mind several publicly known and published events. See if you can guess what this short list has in common:

- News outlets reported on a mysterious illness dubbed *The Havana Syndrome.* It resulted from a sonic attack on embassy workers in Cuba and China. Foreign diplomats in other countries have also reported such attacks. But what's more, people within the US capital and other US cities have also reported experiencing symptoms of the mysterious illness.

- A number of years ago a documentary aired on cable TV called *The Town that Caught Tourette's.* It documented a town in New York State where mainly young women were afflicted with unexplained muscle movements and verbal tics.

- In the 1980s a pastor published a pamphlet in which he claimed that God had audibly spoken to him while he was praying. According to the pastor he was praying in his home out loud when a voice came from seemingly nowhere claiming to be God. He searched the house and found no one. This voice then proceeded to give him a revelation based on his prayer.

- British TV aired a show in which an atheist staged a mock religious service where he was able to get unsuspecting people to have simulated charismatic experiences. However, he refused to reveal how he had done it.

- *Penn and Teller's Fool Us* has featured performers who were able to secretly send and receive information. When the performers use a particular technology they generally win a trophy for being able to deceive.

- In recent memory a man scratched *My ELF Weapon* on a shotgun and killed several people with it in a naval shipyard. News outlets reported that *ELF* likely stood for *electromagnetic frequency*; and, therefore, the man believed that the Navy was harassing him with ELF. Ranking military officials released a statement to the effect that the US military does not have electromagnetic weapons, which is true but it does not tell the whole story.

So, what do these and other seemingly related events have in common? The answer: a little known technology that has been around since at least the 1970s.

As someone who has an electrical engineering background *and* has had contact with the very device that can cause these things – a device that can be used to push someone over the edge to commit a horrific act – I wish to expose this hidden reality. I must add that I am *not* a conspiracy-minded individual, nor am I drawn to conspiracy forums, nor do I usually even listen to them. In fact, I am fairly skeptical about most things; I tend to withhold judgment until something can be confirmed. I do, however, like to know how things work. I also like to teach others how things work, which is what I am attempting to do in this book. In doing this I hope to verify a hidden reality. I hope this verification will help people who claim to be "Targeted," as well as those who tend to be dismissive of such claims, not to be further ensnared by deceptive, ignorant conspiracy theories. My goal is to arm people with what victimizers do not want their victims to know: THE TRUTH.

A Little Background

In my childhood I was fascinated with electronics. At a very young age I could read a schematic, tell you what components were used for and how they worked. I could even build complex circuits, and spent endless hours on solderless breadboards doing so. I became so knowledgeable that the 5th grade science teacher pulled me out of my other classes to teach his class about electronics. (Not fun for a shy kid.)

In the mid-90s I sought to further my love of electronics at the local college. Around that time I began working at a factory that made parts for a department of defense computer and for the automative industry. It was a job to help pay for college and the cost of living. I also learned valuable technical skills while working there.

The owner of this factory was a Russian national. In his office he had an electronic device packaged in a metallic silver box with the word *ultrasound* on it. (The device also has other more modern packaging.) He obtained this device at a trade show. It was an ultrasonic surveillance device that he used to monitor the factory floor. However, it could do much more than just "listen" to people.

I now wish to answer two revealing questions: How does this device work? And what other capabilities does it have? The reason why I believe these questions are important should become evident.

How Does it Work?

Frequency and Modulation

Everyone is familiar with radio frequency. You get into your car, tune into the radio station of your choice, and sing along with your favorite songs on your commute. You can travel 45 or more miles from the radio tower, through short tunnels, up and down hills, and still receive the station. But do you know what radio frequency actually is?

When you pass a current through a conductor of any kind, such as a wire, a metal part, etc., it will produce an electromagnetic field and an electrostatic field. These two fields will radiate from the conductor at right angles from each other at the speed of light. How strong these fields are is determined by the strength of the current traveling through the conductor. If a strong enough alternating current is passed through a conductor within a specific frequency range these lines of force can be transmitted over long distances. These frequency lines of force are called radio frequencies, or RF for short.

Frequencies, as you may know, are measured in hertz (abbreviated Hz). A hertz is a cycle per second. So, for example, in the US household current is around 60Hz, meaning that it is an alternating current that changes polarity (positive and negative) 60 times per second. A kilohertz (kHz) frequency has 1,000 or more cycles per second; a megahertz (MHz) frequency has 1,000,000 or more cycles per second; and a gigahertz (GHz) frequency has 1,000,000,000 or more cycles per second. I would also not be surprised if an engineer has figured out how to produce frequencies over a trillion Hz. Therefore, you can think of a frequency as a signal that frequently changes; a hertz measures how many times per second the signal changes.

The wave form of a frequency can be seen on an oscilloscope. A few examples:

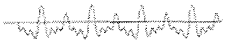
a sine wave

a rectangular wave

a sawtooth wave

a triangular wave

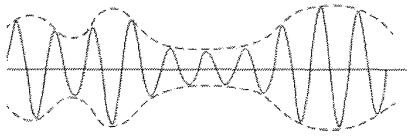
a human voice



a descending sawtooth

The AM frequency band is between 530 to 1700 kHz. AM stands for amplitude modulation. Modulation refers to the process of one signal frequency controlling another. So in the AM radio band one signal, known as the program signal, controls the amplitude of another signal known as the carrier signal. You can think of amplitude as the peak of a frequency wave. A wave will have a top peak and a low peak, as seen in the above illustrations.

AM radio frequency can be illustrated thus:



←Program frequency
←Carrier frequency
←Program frequency

I spoke at length about frequencies, and AM radio frequency in particular, for one reason: to illustrate how modulation works, which is the principle on which the surveillance device I mentioned is based. So one frequency modulating another is as old as AM radio; it is nothing new. However, before we get to a better understanding of how the device works more basic electronics needs to be explained.

Before I continue I think it is necessary to make one thing clear: there is no evidence to indicate that the electromagnetic or electrostatic fields produced by all electronics are harmful to humans. In fact, the earth itself is a gigantic magnet; without its magnetic field life could not exist on this planet. Furthermore, all of us are bombarded with electrostatic frequencies virtually every second of our lives, some from solar activity; and no rational thinking person notices them in their body or worries about them. So with this in mind, don't fall for sensationalist theories regarding such fields. No need to worry about electrostatic fields unless…(read on).

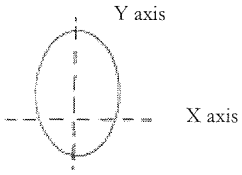
As we return to modulation a relevant question needs to be answered: In the AM radio band one RF signal modulates (controls) another RF signal, so could a sound frequency be used to control another frequency, whether sound or electrostatic? The answer is, yes, a sound frequency can modulate both. You may have just learned something, namely, that a sound frequency can modulate an electrostatic frequency.

Transducers

Have you ever heard of the piezoelectric effect? I'm guessing that if you are not an electronics nerd you probably have not. It refers to a crystal, such as quartz or some other kind of material, resonating ("ringing") from an axis when a current is passed through the perpendicular axis. These axes are called the X axis and the Y axis. So, if current passes through the X axis the Y axis will resonate; if it passes through the Y axis the X axis will resonate. But what would happen if you put some type of mechanical stress on either axis? The perpendicular axis will produce a small voltage that will vary in step with the stress.

The resonant frequency a crystal was designed for is called its fundamental. The fundamental (resonant frequency) is determined mainly by the thickness of the crystal slab and its size. But a crystal can be made to resonate at integer multiples of the fundamental (i.e., the fundamental frequency multiplied by 2, the fundamental multiplied by 3, etc.; which are called the second harmonic, the third harmonic, and so forth). However, the crystal will resonate to lesser degrees the greater the multiple.

Enlarged View of a Crystal Slab (From Top)



Why have I mentioned the piezoelectric effect? Because it is the principle behind almost all transducers. At this point you may be asking, what is a transducer?

Imagine a beautiful summer morning at the lake. The sky is starting to lighten before the sun appears over the horizon. You are in your bass boat looking for the right spot. So you push the power button on the fish finder to see what might be lurking in its depths. This sends a current to the underwater transducer which then produces a sound frequency that is directed down. The sound frequency travels through the water, "hits" various fish, producing an echo from each

one. Some of the sound frequency also hits the lake bottom and bounces back. All of these echoes are then received by the same transducer that produced the original sound. This somewhat familiar concept illustrates the piezoelectric effect. The transducer has a crystal in it that resonates when a voltage is applied to it. This produces a sound frequency. After a finite amount of time echoes of the frequency return to the transducer which puts mechanical stress on the crystal. This creates a small voltage with each echo that the fish finder is designed to interpret.

So you can think of a transducer as a kind of speaker, though able to produce frequencies that a speaker cannot. Some transducers can even receive frequencies utilizing the same principles as a microphone with a crystal element, though often within a specific frequency range rather than a broad range of frequencies. A transducer with a number of different crystals in it can produce a number of different sound frequencies ranging from an audible sound to inaudible ultrasound (sound frequency above 20 kHz).

Oscillators

I have talked a lot about frequencies, but in practical electronics, what circuit actually produces a frequency? Most complex electrical devices, such as computers, game consoles, cell phones, TVs, radios, etc., have an oscillator. Generally, the purpose of any oscillator is to produce an alternating frequency of a desired wave form. The frequency is used for a range of things – from a system clock (i.e., regulating the speed at which the circuit operates), to making another signal more manageable (i.e., converting a signal to a different type), to several other operations. So, to find a device with an oscillator in it you need not look far. You likely can end your quest by reaching into your pocket and pulling our your cell phone.

But in many applications an oscillator that produces a single wave type is often not enough to meet the need. It might be desired to produce a whole host of wave types and frequencies to accomplish various tasks. An oscillator that does this very thing is often called a function generator. You can think of a function generator, by way of analogy, as a musical synthesizer. Just as the keys can be programmed to make a whole range of sounds, a function generator can create a range of wave types and frequencies. (What do you suppose creates the sound types in that particular instrument? Hmmm…) But for all practical purposes the terms oscillator and function generator are synonymous. No need to get picky here.

So, I spoke about function generators, piezoelectric transducers, and modulating frequencies. Perhaps now it is time to put these components together and see how the device I mentioned works.

The Device

The surveillance device I described would use ultrasound (inaudible sound frequency above 20 kHz) like AM radio frequency. A function generator would produce the signal, and other frequencies, which would be emitted by the piezoelectric transducer. In essence, an emitted ultrasonic frequency would capture audible sound by modulation. The ultrasonic signal with the modulated sound is then received by the transducer within a very finite amount of time, very close to instantaneously. This signal is then electronically decoded so that the modulated sound frequency will translate to a speaker. Obviously that is done so the user of the device is able to hear what was captured. But what's more, just as an RF signal can travel great distances and go virtually anywhere, the ultrasonic signal produced by the device has similar properties. That means, therefore, that people can be surveilled anywhere, in any place, and from great distances from a device that sits on a desk.

You might be asking yourself why I am going into all this detail to explain how a piece of equipment works. The answer is that I want to show that what I am describing is not a nut job conspiracy theory, but is basic electronics that has been around for quite some time. But unfortunately, the science behind the device is about to get more frightening than any idiot having the ability to surveil others without wiretaps or scanners; and even more frightening than those being surveilled having no possible way of escape.

One additional note on the surveillance aspect. You likely do not know that some people, whenever they think in their mind, their throat vibrates in the same way as when they or anyone else talks. However, this vibration is not as pronounced as when they talk audibly. I suspect that many credentialled MDs do not even know about this phenomenon. The reason why they likely do not know is because it is undetectable by unaided observation. No one by simply talking to an individual, looking at them, or even listening to them is able to tell if a person's throat vibrates when they think. In fact, it is so faint that it cannot even be felt. For all practical purposes it is undetectable and would not be an issue unless…

It is time to share a secret: the ultrasonic device can detect those very faint vibrations in the throat of such individuals and convert them to an audible voice at the receiver. So, in essence, a small percentage of people are susceptible to ultrasonic surveillance; someone with one of those devices can pretty much listen to them think.

I suspect that the vast majority of people who claim to be "Targeted" fall within the category of being susceptible to ultrasonic surveillance. When some weird voyeur with such equipment goes "fishing" with it (for lack of a better word), and happens upon such a person who may be committing all manner of sexual immorality, that voyeur is going to think, *Jackpot!* Then the susceptible individual with have someone's undivided attention.

What Other Capabilities Does the Device Have?

Modulated Sound

As frightening as that reality may be to some it does not end there. The same ultrasonic signal that captures audible sound by modulation can be used to *send* audible sound. Furthermore, the modulating signal can also send an electrostatic charge. So any place that an ultrasonic signal is able to capture sound – which is literally every place except a vacuum – it can also send sound and electrostatic signals.

A somewhat simplified way to think of how an ultrasonic frequency can send an audible sound great distances is to think of the ultrasonic signal as an enclosure of the audible sound. The controlling frequency, in essence, sends the audible sound frequency to a specific point to release it there. That specific point could be within an enclosed room 30 miles away, within an object, a wall, or even within a living being. It could even be the open air or the sky. The possibilities are endless.

The ultrasonic device itself has a microphone within it, a sound effects generator, and the ability to sample and manipulate sound. So think of the possibilities with such equipment – and the enormous potential for abuse! With it an operator could send a quiet voice into someone's head *and* make them think that they are thinking the thought: "I'd better get back to work"; "The part is in the other bin"; "Do not steal." Or something more sinister: "Take off your pants"; "Steal something"; "Buy this ring." Or maybe something extremely bad: a screaming, demonic voice in

their head that only they can hear (aside from the operator talking into the box) that tells them to kill people.

If someone was listening to a song an operator could sample a portion of it, play it on an endless loop while projecting it into their head, and annoy them to death. Or annoy them by making them believe that their ears are ringing. And what should be obvious is that most of the people who are so victimized, and practically everyone else for that matter, will assume all of the above to be auditory hallucinations.

The device can easily be used to make someone seriously paranoid. For example, if someone was strung out on drugs, and thinking irrationally as a result, an operator could cause him to hear the sound of a SWAT team running up the stairs. Or an operator could cause an individual to hear people a short distance away talking about robbing and killing him when, in fact, they are unconcerned about him. If that man is unstable to begin with it could be a recipe for disaster.

A person susceptible to ultrasonic surveillance would be the easiest to make paranoid. Since an operator can tell what the individual is thinking it would be easy to cause them to believe false things. For example, the operator may be able to tell that the susceptible individual needs to urinate. So every time that happens he could project into an adjoining wall the sound effect of a neighbor running water. This could get the individual to believe that the neighbor is spying on him, there are sensors in the walls, he has a "computer chip" in his head that enables the neighbor to know, etc. The operator could then cause people he comes into contact with to sneeze, or scratch their nose, causing him to believe that they are part of the conspiracy. Furthermore, the operator could collect his passwords and PIN numbers to cause even more heartache and loss.

So the potential for abuse should be crystal clear at this point. But we have only scratched the surface. The frightening potential is about to get exponentially worse, though I just hinted at it.

Modulated Electric Charge

Have you ever watched a really bad black and white movie about *Frankenstein* or read the book? The original novel was written by Mary Shelley and published in 1818. In the novel Dr. Frankenstein reanimates a dismembered dead body by utilizing captured lightning. It has been

suggested that the author got the idea for the novel from seeing experiments where current was applied to dismembered frog legs which made them move.

Such experiments have shown that electricity can stimulate nerve endings in muscle tissue and activate the tissue. Experiments with rats have also shown that if you apply an electrical charge to their midbrain they will fall asleep; another charge will wake them up. The reason why electricity causes muscle movements and alters an animal's state of consciousness is because such things are caused naturally by electrochemical activity. A simplified way to think of it is that electrical activity regulates biochemical processes, which in turn regulate electrical activity. So, in essence, an external electrical charge mimics the internally occurring electrical activity.

It is now known that virtually everything within an animal's nervous system is controlled by electrochemical activity. By virtually everything I mean everything – sensations, such as pain, hunger or pleasure; emotions, such as sorrow, anger, or fear; sleep and wake cycles; thought processes; muscle movements; bowel movements; tear production; salivation; and more. So now consider this: if those things are activated naturally by electrochemical activity, that means the electrical aspect can also be mimicked electronically. Therefore, using electricity to activate bodily processes is not limited to muscle movements and sleep cycles.

Let's say, therefore, that there is an unfortunate man who some bad actor wants to wake up, make stand on his feet, run to a wall, and then pound on it angrily with a closed fist. After this the bad actor wants the poor man to feel dizzy, confused, and then vomit. Could the bad actor do this remotely? If so, how could it be done? You might have some idea at this point; but I feel the need to explain the science behind it.

Recall that I spoke of modulation, which is when one frequency controls another. Then I spoke of how a sound frequency can be used to modulate an electrostatic frequency which, you may have guessed, does have an electrical charge. Now if the muscle tissue of a dismembered frog leg can be activated by directly applying an electrical charge, to remotely activate the tissue, a modulating ultrasonic frequency could easily deliver an electrostatic charge to the nerve endings. In fact, it would be easier to do it this way than with wires and other bulky equipment. The electrical charge also can be finite enough to perfectly mimic the electrical aspect of the naturally occurring electrochemical activity within the muscle. A frequency in the MHz (million cycles per

second) range could literally bombard millions of places on a muscle within a second to cause it to accomplish any task desired.

So let's return to the unfortunate man. To wake him up, delivering an electrostatic charge to his midbrain via a modulating ultrasonic frequency will do the trick. To make him stand up, run to the wall, make a fist, and pound on it repeatedly you would simply target the right muscles, in the right order with the proper electrostatic charges. Obviously a cascade of functions must be done to accomplish this, which is very easily done electronically (i.e., a multitude of calculations per second). To make him angry an electrostatic charge can be delivered to the amygdala. To then make him dizzy simply target the vestibular apparatus within his inner ear. The prefrontal cortex would be targeted next to make him confused. For vomit you need only to target the correct places in the stomach, esophagus, and mouth – being dizzy would also help the matter.

To some people all of this sounds like science fiction. Unfortunately it is not; it is basic electronics and basic physiology.

Beyond the Science

The alarming part, however, is that devices that can do all of these things exist and are in use as I write this. Think of the enormous potential for abuse! But what's more, the device that my boss obtained at a trade show did everything I have described. That means that the device was commercially available for over a decade, which means that untold thousands of them are in private hands. They have seemingly disappeared from the market, though the initiated can find one since they are still produced for use by law enforcement, correctional institutions, and the military. In 2021 a used version of the device was for sale on a popular website, though it was quickly purchased.

All of the information I have given (i.e., the capabilities of such equipment) is readily known to people familiar with ultrasonic surveillance; and they generally do not want the public at large to know about it. There is a twofold reason for this. The first is that if everyone knew about this technology it would open up a Pandora's box. Imagine the abuse that would be unleashed! (But unfortunately it is already occurring.) The second is with people ignorant of such technology it gives a select few a secret power. They can spy on people and deceive people virtually unnoticed. Moreover, they can abuse people with anonymity and virtual impunity.

I mentioned above that the device is still produced for military and law enforcement applications. However, the fact that just about every military base, county jail, and prison in the US has one or more of those devices within their inventory is kept confidential. And it has been my personal experience that institutions and companies that want to keep secrets have someone "out of the loop" as their spokesman. So when you make an inquiry, as far as the person knows, the institution does not engage in such activities. (But when someone in the know starts blabbing, if caught, he will face all kinds of retribution!) When I read ignorant lawsuits by prisoners claiming electronic harassment, or the ignorant rantings of someone claiming to be initiated into the "super soldier program," it is apparent to me that correctional staff and other individuals and/or agencies use ultrasonic surveillance devices on susceptible people for sport. However, the fact that institutions keep their possession of such equipment confidential would make it extremely difficult for those abused to expose the abuse.

I also suspect, but could very well be wrong, that when the media reports on conversations the president had with counsel in confidence, or mentions "whispers of discontent" within an office, it is likely because some media person was using an ultrasonic surveillance device on the government. But imagine the potential for abuse if that media person does not particularly like a lawmaker. What if he wants to help the lawmaker be to the public what he thinks the lawmaker is in reality? Is this not a serious concern? Is it also not concerning that in this way confidential information might be released to the public that results in retaliatory strikes on US personnel?

Some Thoughts on Human Psychology

Have you ever read a book, watched a TV series, or played a video game and become invested in a character? Have you ever become upset when the character you were invested in did not act in the way you had hoped? I think we can all relate to this. It is human psychology; it makes us human.

And have you ever played an online video game? Have you ever noticed that some people are not very nice in them? Do something to the wrong person's video game character and you might meet their wrath – not only in video game land, but in the real world via social media and other ways. One reason for this is because you did not play the way they wanted. They were invested in

the game and therefore had a psychological stake in the outcome. They ultimately had hoped for a different outcome or experience.

Now let's apply human psychology to ultrasonic surveillance. It would not take a giant leap of the imagination to bridge these two. If some, for lack of a better word, "troll" with one of those devices happened upon a susceptible person, they could very easily become invested in that person and not very nice to them. In essence, they would treat the poor soul like a video game avatar rather than a real person whose life is going to be adversely affected by the nonsense they are afflicting the victim with.

And let's delve a little deeper into the human psyche. People who spy on others, the voyeuristic, have a predatory mindset. They see themselves as higher on the food chain, so to speak, and their victims as prey – as little more than animals to be exploited. This gives them a sense of power and control having this secret knowledge, this secret view that the victim does not know about.

Just about everyone has seen how a cat treats a mouse. The cat often will not quickly kill the creature, but will toy with it, and pretty much torture the animal. We do not condemn the cat for being a cat. But we would rightly condemn a person for torturing an animal for amusement. It is right to condemn such a person because man is a moral actor and is morally accountable. And if we hold man morally accountable for abusing an animal, should we not all the more hold him accountable for abusing people, whether the abuse is by overt means or by covert means (i.e., ultrasonic harassment)?

For the Victims

If you claim to be "Targeted," realize that deception and misinformation are your victimizer's best weapons. They, in essence, use sleight-of-hand to get you to believe what is false: it is microwave radiation, there is a sensor in the wall, I have a computer chip implanted in my head, the CIA is to blame, etc. And when you research and find inaccurate information that confirms the victimizers' deception, and you then put stock in it, it frankly makes you look like a mental case. Their goal is accomplished. They have a completely plausible cover for their wrongdoing.

And please do not rail at mental health professionals. They likely are not "in on it". When I read victims' accounts something that is apparent is that mental health professionals are likely just as

ignorant as you are! So when you talk about whatever symptoms you are afflicted with, they will simply defer to the authority of the DSM V, and diagnose you with whatever mental illness is defined by those symptoms. The ignorance on the part of mental health professionals about this technology is taken advantage of by victimizers. If a credentialled medical person says a man is mentally ill, but he says that he is the victim of electronic harassment, who would people be more likely to believe? So because of this the victimizer's cover is now seemingly backed up by medical science.

To be clear I am *not* saying that mental health professionals should be avoided altogether. I am saying that electronics does not fall within their field of study. Because of this they will likely be oblivious to the fact that mental illness can be mimicked electronically. And the fact that mental illness can be mimicked by electronic harassment obviously does not negate the fact that many such illnesses are not.

Because of the ignorance regarding this topic there are people who capitalize on the victims. They, in essence, further victimize those who are already suffering and downtrodden. Devices such as strong magnets, aluminum foil helmets, and magnetic tape blankets will offer no real help. Nor will a whole host of other silly contraptions available online. If they seemingly help the reason for this is: (1) you are being patronized by whoever is surveilling you; or (2) psychologically you believe it does work. But there is no reason electronically why they would work, and frankly make those who fall for such nonsense look like lunatics.

I have also read accounts of victims who were put to sleep (which the device is capable of doing to people), drugged, kidnapped, and actually implanted with all sorts of things. I suspect the main purpose of the implants is misdirection, in essence, to screw with you. They are similar to a woman and a curtain in a magic act, which shift the focus and cover something that would give away the secret. At best, if one was large enough to house an RFID chip, it could have information that could be retrieved by a scanner, exactly like what was put into the neck of my dog. But electronically they could do little other than ID.

There is another item I must mention that I have only recently discovered. In the past I have read accounts of people who were allegedly burned remotely. I recently discovered, by an experiment performed on me, how this is done. Someone need only to use the device to cause

you to scratch yourself in your sleep. If done correctly you get the equivalent of a rug burn. As I write this I have a burn on my arm from this method that has been there for over a month.

A Final Plea

I have revealed to you what many have tried to keep confidential. I have made little attempt to "sanitize" my report for public consumption. I did so for the benefit of the victims and as a call to public action.

It is probably inevitable that foreign diplomats and other embassy workers will be surveilled. Not a lot can be done to stop that. But when someone within the US suffers from the so-called *Havana Syndrome*, and when a host of other people are vicitimized by this technology, I feel it is time to act.

I think everyone would agree that no one should be surveilled and harassed within their own home by anyone. We would all likely agree that workers should not be controlled ultrasonically. No one should be forced to live with an electronically simulated mental illness, such as Tourette's, tics, auditory hallucinations, pain, anger, or a host of other abuses. No one should be screwed with so much that out of desperation he takes a shotgun and commits mass murder of his perceived offenders. A pastor should have the right to pray without some "troll" pretending to be the Deity who is giving a revelation. No one should be put to sleep and then kidnapped. And I would think that most would agree that no prisoner should have to file a lawsuit claiming endless electronic harassment. But this short list of offenses by no means exhausts the harm done with those devices.

I have all but named the specific surveillance device. The initiated can find one, however, since they have been around for some time, and are still produced. (A man whose discovery contributed to the development of the device has given a TED talk. He gives an audio demonstration of a soda can opening inside someone's head.)

It is time for victims of these devices to bring a class action lawsuit against the manufacturer(s) of the device for the plague they have unleashed on humanity. Why were they foolish enough to allow such technology to be sold to the public? And I'm sure some law firm can see the moneymaking potential in litigating on behalf of the victims.

Furthermore, I would suggest that the ACLU, and other civil rights organizations, help prisoners who are harassed by this technology. Surveilling prisoners is one thing; but harassing them electronically for sport is unacceptable.

Moreover, lawmakers should be petitioned endlessly to permanently ban all civilian possession of such devices and strictly regulate their use by the military, prisons and law enforcement. (Why does an off duty officer need one in his home?) And I would add that all long range ultrasonic frequency transmissions should be regulated by the FCC, just as they regulate the RF spectrum.

In addition, I believe qualified people should inform mental health professionals how mental illness can be simulated in people electronically, and that the technology is in circulation and has been for some time. Also they should be informed that institutionalized people (i.e., prisoners) are much more likely to be so targeted. Knowing the actual cause of something makes a substantive resolution much more attainable. And I would think that the APA would vociferously oppose the deployment of such technology on unsuspecting individuals and work to end such abuse.

A final note to any electrical engineer who may read this, who may be in a position to help. You know that a scanner can be made that will pick up any RF signal. You could produce a type of scanner that can detect any ultrasonic signal and quickly trace it to its source. (I know that this last part is somewhat difficult, but not impossible.) Perhaps also have a software technician add the ability to place that source on a map in real time. This way someone being harassed can report the offender to law enforcement instantly. As far as I know no such device is available to the public. If such technology was made available more than a few victims would benefit from it.

I would like to conclude this concise technological summary by making my sentiments about this little known ultrasonic device absolutely clear. The public has a right to know the truth. Victims of this technology have the right to know the truth. And I believe manufacturers should be held accountable for selling such technology to the public. Finally, I believe that anyone who victimizes people with this technology should be exposed and face prosecution.

Made in the USA
Monee, IL
22 September 2024

Have you heard about these publicly known and published events?

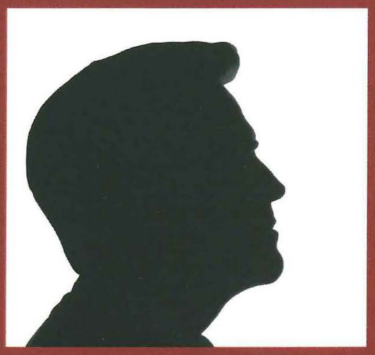
- News outlets reported on a mysterious illness dubbed The Havana Syndrome. It resulted from a sonic attack on embassy workers in Cuba and China.
- A number of years ago a documentary aired on cable TV called The Town that Caught Tourette's. It documented a town in New York State where mainly young women were afflicted with unexplained muscle movements and verbal tics.
- In recent memory a man scratched My ELF Weapon on a shotgun and killed several people with it in a naval shipyard. News outlets reported that ELF likely stood for electromagnetic frequency; and, therefore, the man believed that the Navy was harassing him with ELF. Ranking military officials released a statement to the effect that the US military does not have electromagnetic weapons, which is true but it does not tell the whole story.

So, what do these and other seemingly related events have in common? The answer: a little known technology that has been around since at least the 1970s.

As someone who has an electrical engineering background and has had contact with the very device that can cause these things – a device that can be used to push someone over the edge to commit a horrific act – I wish to expose this hidden reality.

I hope that by explaining how this device works I will help people who claim to be "Targeted," as well as those who tend to be dismissive of such claims. My goal is to arm people with what victimizers do not want their victims to know: THE TRUTH.

J.C.Chase has a life-long fascination with electonics and has a background in electronic engineering.



ISBN 9798332642692

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

December 17, 2024

Before

MICHAEL B. BRENNAN, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 24-3259

TAHINA CORCORAN, as next friend on behalf of JOSEPH E. CORCORAN,
Petitioner-Appellant,

v.

RON NEAL,
Respondent-Appellee.

Appeal from the United States District Court for the Northern District of Indiana, South Bend Division.

No. 3:24-CV-970-JD

Jon E. DeGuilio,
Judge.

O R D E R

The Petitioner-Appellant filed a petition for rehearing and rehearing en banc on December 17, 2024. Because the Supreme Court has the final authority to speak on the issues raised by the Petitioner-Appellant, all members of the original panel voted to deny rehearing, and we expedited consideration of Petitioner-Appellant's request for en banc rehearing. Because the Supreme Court has the final authority to speak on the issues raised by the Petitioner-Appellant, no judge in active service has requested a vote on the petition for rehearing en banc. Accordingly, the order directing the Respondent-Appellee to file a response to the petition for rehearing en banc is VACATED, and the petition for rehearing and rehearing en banc is DENIED.