

IN THE COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO

2024 APR 30 P 2:51

BARBARA A. WIEDENBEIN
CLERK OF COMMON PLEAS
CLERMONT COUNTY, OH

STATE OF OHIO,	:	
Plaintiff,	:	Case No. 2023 CR 000407
vs.	:	JUDGE RICHARD P. FERENC
CHAD C. DOERMAN,	:	EVIDENTIARY HEARING REQUESTED
Defendant.	:	

**DEFENSE MOTION #43: MOTION TO EXCLUDE THE DEATH PENALTY DUE TO
SERIOUS MENTAL ILLNESS AT TIME OF OFFENSE**

Chad Doerman, pursuant to R.C. §2929.025(C), asks the Court to find that he is ineligible for a death sentence due to serious mental illness. R.C. §2929.025(E)(2). This request is being filed in conjunction with Mr. Doerman's plea of not guilty by reason of insanity. Mr. Doerman acknowledges that if the Court finds that he is statutorily ineligible for a death sentence due to serious mental illness (SMI), and the jury convicts him of aggravated murder and one or more aggravating circumstance, the Court will sentence him to life imprisonment without parole. R.C. 2929.03(E)(2). The following memorandum supports this motion.

Per a status conference held on April 29, 2024, this Court will hold an initial hearing on the instant motion on May 3, 2024, at 1:00 p.m.; and Defendant's counsel will submit an expert's report in support of this motion by no later than June 3, 2024.

MEMORANDUM IN SUPPORT

I. Summary of Argument.

Defendant contends that he is a person with a serious mental illness who is entitled to be excluded from the possibility of a death sentence pursuant to Ohio Revised Code §2929.025 (commonly referred to as the SMI statute). A person who commits capital aggravated murder while suffering from certain serious mental illnesses is ineligible for a death sentence if one of the qualifying mental illnesses “significantly impaired the person’s capacity to exercise rational judgment in relation to the person’s conduct with respect to either of the following: (i) Conforming the person’s conduct to the requirements of law; [or] (ii) Appreciating the nature, consequences, or wrongfulness of the person’s conduct.” R.C. §§ 2929.025(A)(1) and 2929.025(E)(2).

“If a person raises the matter of the person’s serious mental illness at the time of the alleged commission of the offense, the court shall order an evaluation of the person . . . and shall hold a pretrial hearing on the matter.” R.C. §2929.025(C). Defendant contends that the evidence at a hearing will show that Mr. Doerman suffered from a qualifying SMI at the time of the alleged commission of the offense; that the mental illness impacted his behavior; and thus, he is ineligible for a death sentence.

This motion is being filed in conjunction with Mr. Doerman’s plea of not guilty by reason of insanity, which is expressly permitted by the SMI statute. R.C. §2929.025(G). By filing this motion, Mr. Doerman is not stating or conceding that he falls short of meeting the NGRI standard. Rather, by combining his NGRI plea with the instant SMI motion, Mr. Doerman is arguing that: (1) this Court should remove the death penalty specifications pre-trial, thereby eliminating a need to death/life qualify a jury; (2) counsel for Mr. Doerman retain the right to argue NGRI at trial; and (3) if NGRI is rejected and he is convicted of aggravated murder and one or more aggravating

circumstance, then pursuant to R.C. §2929.03(E)(2), Mr. Doerman must be sentenced to life imprisonment without parole.

II. Statement of Relevant¹ Facts.

Mr. Doerman has been charged with nine counts of aggravated murder with capital specifications. Board certified forensic psychologist, Dr. Bob Stinson examined Mr. Doerman and found that he had a severe mental disease at the time of the alleged commission of the offenses that caused him not to appreciate the wrongfulness of his actions and met the requirements for NGRI . *See*, Stinson’s March 22, 2024 Report, pgs. 42-45 (under seal). Dr. Emily Davis also found that Mr. Doerman had a severe mental disease at the time of the alleged offenses but differed with Dr. Stinson regarding Mr. Doerman’s appreciation of the wrongfulness of his actions (Dr. Davis’s Report is also before this Court under seal).

It is anticipated that Dr. Stinson will find in a companion SMI Report that Mr. Doerman also meets the requirements of R.C. §2929.025. Defendant contends that the evidence presented at the evidentiary hearing will show that Mr. Doerman’s SMI significantly impaired his capacity to exercise rational judgment in relation to: (i) conforming his conduct to the requirements of the law; (ii) appreciating the nature, consequences, or wrongfulness of his conduct; or (ii) both. R.C. §2929.025(A)(1)(b)(i) and (ii).

III. Statement of the Law.

Ohio law prohibits the execution of persons with serious mental illnesses. The Governor signed House Bill 136 into law effective April 12, 2021. Under the new law, the State may not execute a person if (a) the person has been diagnosed with one of the four enumerated mental

¹ This pleading asserts a claim that Mr. Doerman suffered from a SMI at the time of the alleged commission of the offense and that he qualifies for relief under R.C. §2929.025. Counsel limits the facts recited here to facts that are relevant to the question of whether Doerman qualifies for SMI relief under the statute.

illnesses; and (b) at the time of the offense, the mental illness “significantly impaired the person’s capacity to exercise rational judgment in relation to the person’s conduct” with respect to either conforming their conduct to the requirements of the law or appreciating the nature, consequences, or wrongfulness of their conduct. R.C. §2929.025(A)(1)(b).

Executing the seriously mentally ill is cruel and unusual punishment in violation of both the Ohio and the United States Constitutions. Persons suffering from SMI at the time of the alleged commission of the offense are not morally culpable to the same extent as others. Like minors, the insane, or those suffering from intellectual disability, imposing a death sentence on one who is SMI serves no penological purpose. *Compare Roper v. Simmons*, 543 U.S. 551, 569, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005) (“A lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions.”); *Ford v. Wainwright*, 477 U.S. 399, 409, 106 S.Ct. 2595, 91 L.Ed.2d 335 (We “seriously question the retributive value of executing a person who has no comprehension of why he has been singled out and stripped of his fundamental right to live.”); *Atkins v. Virginia*, 536 U.S. 304, 318, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002) (“Because of their impairments, however, by definition [the intellectually disabled] have diminished capacities to understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand the reactions of others. . . . Their deficiencies . . . diminish their personal culpability.”). Accordingly, execution of those who suffered from a SMI at the time of the alleged commission of the offense constitutes cruel and unusual punishment.

A. Ohio constitutional ban on cruel and unusual punishment.

The death penalty is cruel and unusual punishment for people with serious mental illnesses under Article I, Section 9 of the Ohio Constitution.

The Ohio Constitution is “a document of independent force” that “contains its own prohibition against cruel and unusual punishment.” *In re C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E.2d 729, ¶ 59. In interpreting the Ohio Constitution, Ohio courts are “not confined by the federal courts’ interpretations of similar provisions in the federal Constitution.” *State v. Mole*, 149 Ohio St.3d 215, 2016-Ohio-5124, 74 N.E.3d 368, ¶ 21. The Ohio Constitution can and does provide greater protections than those provided by the United States Constitution. *See State v. Farris*, 109 Ohio St.3d 519, 2006-Ohio-3255, 849 N.E.2d 985, ¶ 48 (holding that Article I, Section 10 protections are greater than federal Fourth Amendment protections); *State v. Brown*, 99 Ohio St.3d 323, 2003-Ohio-3931, 792 N.E.2d 175, ¶ 22 (same).

Under the Ohio Constitution, cruel and unusual punishment is punishment that “under the circumstances would be considered shocking to any reasonable person.” *State v. Blankenship*, 145 Ohio St.3d 221, 2015-Ohio-4624, 48 N.E.3d 516, ¶ 32. Punishments are also prohibited when they are “so greatly disproportionate to the offense as to shock the sense of justice of the community.” *In re C.P.* at ¶ 60. In interpreting the cruel and unusual punishment clause in Article I, Section 9, courts should “consider *Ohio’s* conditions and traditions”—looking not to federal law, but to the people of Ohio, to determine what the Ohio Constitution guarantees. *Mole* at ¶ 22 (emphasis added).

The Ohio Supreme Court has addressed the constitutionality of executing people with SMI, but it has most often addressed this issue under the Eighth Amendment to the United States Constitution. *See State v. Mammone*, 139 Ohio St.3d 467, 2014-Ohio-1942, 13 N.E.3d 1051, ¶ 179 (rejecting Eighth Amendment claim but not considering Article I, Section 9 claim); *State v.*

Ketterer, 111 Ohio St.3d 70, 2006-Ohio-5283, 855 N.E.2d 48, ¶ 176 (same); *State v. Hancock*, 108 Ohio St.3d 57, 2006-Ohio-160, ¶¶ 154-58 (same). The Ohio Supreme Court has not addressed the state law issue since summarily dismissing it in *State v. Scott*, 92 Ohio St.3d 1 (2001) (per curiam). In that case, the Court rejected the claim because there was “no authority” supporting the appellant’s legal position and because the trial court had found that the appellant was neither insane nor incompetent to stand trial. *Id.* at 2-3. Justice Pfeifer dissented, stating, “This court has a chance to take a step toward being a more civilized and humane society. This court could declare that in the interests of protecting human dignity, Article I, Section 9 of the Ohio Constitution prohibits the execution of a convict with a severe mental illness.” *Id.* at 11 (Pfeifer, J., dissenting).

The conditions and traditions of Ohio have changed since *Scott* was decided in 2001. At that time, it was still legal to execute the intellectually disabled: *Atkins* had not yet been decided. Now, the Ohio Supreme Court has not only embraced *Atkins*, but has emphasized that the test for determining intellectual disability must conform to current medical standards. *State v. Ford*, 158 Ohio St.3d 139, 2019-Ohio-4539, 140 N.E.3d 616, ¶¶ 93-100. Several other justices joined Justice Pfeifer in stating that Ohio should not execute people with serious mental illnesses. *Ketterer*, 111 Ohio St.3d 70, ¶ 213 (Lundberg Stratton, J., concurring) (joined by Pfeifer, J.) (“I believe that the time has come to reexamine whether we, as a society, should administer the death penalty to a person with a serious mental illness”); *State v. Lang*, 129 Ohio St.3d 512, 2011-Ohio-4215, 954 N.E.2d 596, ¶ 366 (Lundberg Stratton, J., concurring) (joined by Pfeifer and McGee Brown, JJ.) (“A society that denies mental health care to those who need it the most and then subsequently executes them is cruel and inhumane at its very core”). Seventy-five percent of the population is opposed to executing the mentally ill, as is the American Bar Association and several mental health organizations. *Ketterer* at ¶¶ 232-237. And most importantly, in 2021, the people of Ohio through

their legislature determined that people with serious mental illnesses should not be subject to the death penalty. HB 136.

The enactment of HB 136 is a clear signal that executing a person with a SMI shocks the sense of justice of the community. As Representative Brett Hillyer, who sponsored the bill, testified, “Ohioans may be split on the issue of legality concerning the death penalty, but most will concede executing an individual found to be suffering from a serious mental illness at the time of the crime is neither fair nor just, and this punishment should be reserved for those who have intentionally done mortal harm to another.” B. Hillyer, *Proponent Testimony to the House Criminal Justice Committee*, Am.Sub. H.B. No. 136 (Apr. 11, 2019). Legal, medical, and religious communities provided overwhelming support for HB 136, showing that it truly represents how the “conditions and traditions” in Ohio have evolved. As the Supreme Court of the United States has stated, “legislation is the ‘clearest and most reliable objective evidence of contemporary values.’” *Atkins v. Virginia*, 536 U.S. 304, 322-23 (2002) (quotation omitted).

The execution of mentally ill people has been framed as a “policy” issue, but before *Atkins* and *Roper*, executing children and people with intellectual disabilities was also a policy issue left up to state legislatures. This Court should recognize that executing people with serious mental illnesses is unconstitutional under the Ohio Constitution.

B. U.S. Constitution, Eighth Amendment ban on cruel and unusual punishment.

Alternatively, imposing a death sentence on the seriously mentally ill is cruel and unusual punishment under the Eighth Amendment to the United States Constitution.

The Eighth Amendment prohibits cruel and unusual punishments, or “guarantees individuals the right not to be subjected to excessive sanctions.” *Roper v. Simmons*, 543 U.S. 551, 560 (2005). “Because the death penalty is the most severe punishment, the Eighth Amendment

applies to it with special force. Capital punishment must be limited to those offenders who commit a narrow category of the most serious crimes and whose extreme culpability makes them the most deserving of execution.” *Roper v. Simmons*, 543 U.S. 551 (2005) (citation and quotations omitted). The Eighth Amendment “must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.” *Atkins*, 536 U.S. at 311-12.

The Ohio Supreme Court has held that executing people with SMI does not violate the Eighth Amendment, most recently in *State v. Mammone*, 139 Ohio St.3d 467, 2014-Ohio-1942, ¶ 179. However, Ohio’s new SMI law, as well as progress throughout the country, shows that standards of decency have evolved since that decision.

As discussed above, Ohio’s SMI law signals a clear consensus in our state that death is an excessive sanction for a person who was SMI at the time of their crime. The “clearest and most reliable objective evidence of contemporary values is the legislation enacted by the country’s legislatures.” *Id.* Similar bills have been introduced in numerous states and such bills have passed at least one house in Kentucky and Texas. Death Penalty Information Center, *Recent Legislative Activity* (2021)². See *Atkins* at 315 (noting bills that had passed in at least one house when considering legislation banning execution of people with intellectual disabilities).

There has also been progress outside of Ohio. Since 2014, when *Mammone* was decided, five states have abolished the death penalty entirely: Delaware in 2016, Washington in 2018, New Hampshire in 2019, Colorado in 2020, and Virginia in 2021. Death Penalty Information Center, *State by State*³. Polls confirm that public support for the death penalty is dropping. Gallup polls show that 60% of people now favor life sentences over the death penalty, and 75% of people

² Available at: <https://deathpenaltyinfo.org/facts-and-research/recent-legislative-activity>. (Last accessed 03/28/2022).

³ Available at: <https://deathpenaltyinfo.org/state-and-federal-info/state-by-state> (Last accessed 03/28/2022).

oppose the death penalty for people with SMI. See Death Penalty Information Center, *Gallup Poll – For First Time, Majority of Americans Prefer Life Sentence to Capital Punishment* (Nov. 25, 2019)⁴. Gallup, *Death Penalty*⁵.

As the Supreme Court of the United States explained in *Atkins*, when considering the evolving standards of decency, the important factor is “not so much the number of [] States . . . , but the consistency of the direction of change.” *Atkins* at 315. The clear trend, both in Ohio and across the United States, is toward abolition of the death penalty, particularly for people with SMI.

People with SMI are less culpable for largely the same reasons that people with intellectual disabilities are less culpable for their crimes. In the instant case, in his NGRI Report Dr. Stinson opined that Mr. Doerman had a severe mental disease at the time of the alleged offenses; that he was experiencing delusions and misperceptions in a state of psychosis; and that his serious mental disease impaired his judgment, behavior, capacity to recognize reality, and his ability to recognize the wrongfulness of his conduct. Upon information and belief, Dr. Stinson will issue a report specifically addressing the SMI statute’s applicability to Mr. Doerman and render an opinion that he was seriously mentally ill at the time of the alleged offenses and otherwise meets the requirements of R.C. §2929.025 for SMI.

Like a person with an intellectual disability, neither the retributive or deterrent justifications for the death penalty apply to Mr. Doerman’s situation. He has diminished culpability because his rational judgment and impulse control were significantly impaired at the time of the offense, making the retributive justification inapplicable. Compare *Atkins* at 318-19. And it is implausible that he would be deterred. As the Court stated in *Atkins*, “it is the same

⁴ Available at: <https://deathpenaltyinfo.org/news/gallup-poll-for-first-time-majority-of-americans-prefer-life-sentence-to-capital-punishment>. (Last accessed 03/28/2022).

⁵ Available at: <https://news.gallup.com/poll/1606/death-penalty.aspx>. (Last accessed 03/28/2022).

cognitive and behavioral impairments that make these defendants less morally culpable—for example, the diminished ability to understand and process information, to learn from experience, to engage in logical reasoning, or to control impulses—that also makes it less likely that they can process the information of the possibility of execution as a penalty and, as a result, control their conduct based upon that information.” *Id.* at 320. Mr. Doerman’s case shows just one way in which mental disorders reduce a person’s culpability, and thus reduce the appropriateness of the death penalty.

A person claiming to be ineligible for a death sentence has the burden of proving the diagnosis and impairment prongs by a preponderance of the evidence. R.C. §2929.025(D). “[A] preponderance of evidence means the greater weight of evidence. The greater weight may be infinitesimal, and it is only necessary that it be sufficient to destroy the equilibrium.” (Quotation and alteration omitted.) *State v. Stumpf*, 32 Ohio St.3d 95, 102, 512 N.E.2d 598, 606 (1987). If Mr. Doerman meets that burden, the court must declare him ineligible for a sentence of death. R.C. §2929.025(E)(2). The evidence adduced at a hearing will show that he is ineligible for a death sentence due to SMI.

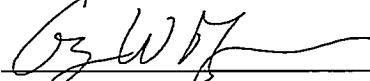
CONCLUSION

Based on the foregoing, Mr. Doerman requests the following relief:

- (1) That this Court grant an evidentiary hearing as required by statute. *See* R.C. §2929.025(C) (“the court*** *shall* hold a pretrial hearing on the matter” (emphasis added));
- (2) That this Court find that he qualifies for SMI relief and is ineligible for a sentence of death. *See* R.C. §2929.025(E)(2); and
- (3) That this Court grant any further relief to which he might be entitled.

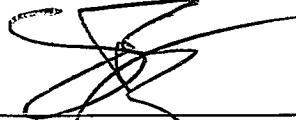
Respectfully submitted,

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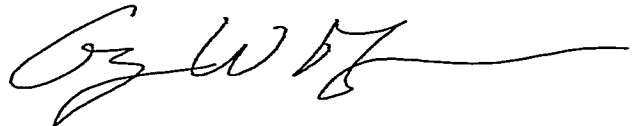


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing DEFENSE MOTION #43: MOTION TO EXCLUDE THE DEATH PENALTY DUE TO SERIOUS MENTAL ILLNESS AT TIME OF OFFENSE was electronically delivered to Clermont County Prosecutor Mark Tekulve at mjtekulve@clermontcountyohio.gov and Lead Assistant Prosecutor Lara Baron at lbaron@clermontcountyohio.gov on this 30th day of April, 2024.



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