

State of Indiana	)	In the Allen Superior Court
	) SS:	
County of Allen	)	Cause No. 02D04-0502-PC-000012
		Criminal No. 02D04-9707-CF-465
Joseph E. Corcoran,	)	
Petitioner,	)	
	)	
v.	)	THIS IS A CAPITAL CASE
	)	UNDER WARRANT
State of Indiana,	)	
Respondent.	)	

Motion for Relief from Judgment

Petitioner, Joseph Corcoran, by and through counsel, respectfully moves this Court to vacate its September 20, 2003, Order Striking Corcoran's Petition for Post-Conviction Relief and its June 9, 2005, Order dismissing Corcoran's signed post-conviction petition under Indiana Trial Rule 60(B). In support, Corcoran states:

1. After Corcoran's direct appeal concluded, on April 8, 2003, the Indiana Supreme Court ordered the trial court to submit a proposed case management post-conviction schedule "for bringing this matter to final judgment." [PCR A 52]¹.
2. On May 8, 2003, the post-conviction court's proposed schedule was filed and included a deadline of September 9, 2003, by which Corcoran's

¹ "T" refers to the record on direct appeal. "PCR A" refers to the appendix filed in 02S00-0304-PD-00143. "PCR T" refers the transcript dated October 21, 2003, filed in that cause. "PCR R" refers to the transcript dated December 19, 2003, filed in that cause.

signed and verified post-conviction petition had to be filed [PCR A 53]. The Indiana Supreme Court approved the schedule [PCR A 54].

3. Because Corcoran, who was and continues to be severely mentally ill, sought to waive his appeal,² he would not sign the post-conviction petition. On September 9, 2003, the deadline the Supreme Court imposed for filing the petition, post-conviction counsel instead filed a Verified Motion to Determine Competency based on Corcoran's mental health history, a recent mental health exam, his department of correction records, and counsel's observations [PCR A 59-65]. Counsel simultaneously tendered an unsigned petition for post-conviction relief [PCR A 83-136].

4. On September 30, 2003, the trial court struck the petition because it was not signed or verified by Corcoran by the date the Indiana Supreme Court approved [PCR A 80-8]. A hearing on the competency motion was scheduled.

5. On October 21, 2003, the post-conviction court held a hearing on whether Corcoran was incompetent to waive his appeals. Corcoran's counsel presented three experts, including a board-certified forensic psychiatrist, a

² Corcoran wanted to die and did not want to potentially halt his execution. Two of his most longstanding delusions are that the prison is using an ultrasound machine to torture him and that he suffers from a speech disorder that causes him to unwillingly say socially unacceptable things and for people to subsequently ostracize him. He suffered (and continues to suffer) near-constant pain from these delusions and believed that the only way he could be relieved of this pain was if he were to be executed.

clinical psychologist, and a neuropsychologist, who testified Corcoran was incompetent to waive his appeals. The judge also questioned Corcoran.

6. On December 19, 2003, despite all testifying experts independently concluding Corcoran was incompetent, the post-conviction court found Corcoran competent to waive post-conviction based on Corcoran's testimony. [PCR A 247-49]. Despite its conclusion based on Corcoran's own assessment of his competency, the post-conviction court acknowledged, "The State concedes that Petitioner is mentally ill." [PCR A 242].

7. On January 7, 2004, Corcoran's counsel filed a timely Notice of Appeal [PCR A 250].

8. On January 11, 2005, the Indiana Supreme Court affirmed the competency determination. *Corcoran v. State*, 820 N.E.2d 655 (Ind. 2005), *aff'd on reh'g*, 827 N.E.2d 542 (Ind. 2005), with Justice Rucker dissenting. The Indiana Supreme Court acknowledged and reaffirmed this Court's earlier finding regarding the State's concession. "The State also concedes that Corcoran suffers from a mental illness. At the competency hearing, the State Public Defender presented the testimony of three mental health experts, each of whom concluded that Corcoran suffers from paranoid schizophrenia." *Corcoran*, 820 N.E.2d at 660.

9. On February 10, 2005, Corcoran tendered a signed and verified post-conviction petition with this court. This court dismissed the petition as untimely. An appeal was taken of the court's ruling. The Indiana Supreme

Court affirmed the decision. *Corcoran v. State*, 845 N.E.2d 1019, 1020 (Ind. 2006) , with Justice Rucker dissenting.

10. Habeas proceedings were extensive where Corcoran received habeas relief twice – only to have it taken away both times. Most relevant for these proceedings, habeas proceedings addressed issues surrounding Corcoran’s competency to waive post-conviction proceedings. A divided Seventh Circuit affirmed on the competency question. *Corcoran v. Buss*, 551 F.3d 703 (7th Cir. 2008). Judge Williams in her dissent noted: “No one contests that Corcoran suffers from a mental illness. This 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.” *Corcoran*, 551 F.3d at 714-15 (Williams, J., dissenting).

11. Corcoran now seeks relief from this court’s September 30, 2003, and June 9, 2005, Orders. The Indiana Supreme Court has authorized Indiana Trial Rule 60(B) as an appropriate vehicle by which to seek the reinstatement of a petition for post-conviction relief following dismissal. *State v. Collier*, 61 N.E.3d 265, 270 (Ind. 2016) (reinstating the trial court’s grant of Collier’s Trial Rule 60(B) motion so he could seek meaningful post-conviction review.)

12. Indiana Trial Rule 60(B)(8) provides that the trial court may relieve a party from a judgment for “any reason justifying relief from the operation of the judgement” that is not otherwise specifically mentioned in the

rule. To prevail under Trial Rule 60(B)(8) a movant must demonstrate: “1) he brought his claim within a reasonable time in light of the circumstances of the case; 2) extraordinary or exceptional circumstances justify that relief; and 3) he has alleged a meritorious claim or defense.” *Collier*, 61 N.E.3d at 269.

13. Corcoran is entitled to relief from the Orders in his post-conviction case under Indiana Trial Rule 60(B)(8).

A. Corcoran brought his claim within a reasonable time in light of the circumstances.

14. Corcoran filed two petitions for post-conviction relief with this court. Corcoran’s initial post-conviction petition was struck by this court because it was not signed or verified by the date provided by the Indiana Supreme Court’s case management schedule. The second petition was signed and verified by Corcoran as required. This Court dismissed the petition because it was not signed within the provided time period.

15. The legal landscape in Indiana has changed since 2003 when Corcoran’s unsigned petition was struck, and his signed petition was dismissed. Recently the Indiana Supreme Court permitted a capital defendant to proceed with post-conviction even though he refused to verify his petition as required by the post-conviction rules within the time provided by the Case Management Schedule. *Isom v. State*, 170 N.E.3d 623, 632 (Ind. 2021).

16. In *Isom* the Indiana Supreme Court determined, “Although [Isom] refused to verify his petition as our post-conviction rules require, we

eventually allowed him to proceed.” *Id.* at 631. The events leading to Isom’s refusal to sign his petition were:

In January 2016, the Public Defender of Indiana tendered a petition for post-conviction relief on Isom's behalf. But the petition lacked Isom's oath and affirmation. The post-conviction court, observing this omission, issued an order giving Isom additional time to file the missing verification page. Yet Isom refused to verify the petition, apparently concluding that his attorneys “were not up to the task of representing him.” The consequence, though, of his not signing the petition was that he would forfeit his post-conviction challenge. The trial court entered an order concluding that Isom had waived post-conviction review, and that his time to file the petition had expired.

In January 2017, after hearing oral argument, we ordered the trial court to deem Isom's petition filed as of the date of our January 13, 2017 order.

Id. at 632.

17. Corcoran should be treated the same as Isom given the change in how the Indiana Supreme Court has dealt with capital defendants who do not comply with the post-conviction rules in the time prescribed by the Court’s Order. In the past, Indiana has permitted a change in legal landscape to apply retroactively in state capital collateral proceedings. *Saylor v. State*, 808 N.E.2d 646, 649 (Ind. 2004) (Indiana chose to apply *Ring* retroactively to state collateral proceedings under state law.) In that instance, the Indiana Supreme Court concluded, “it is not appropriate to execute a person who was convicted and sentenced through a procedure that has now been substantially revised so

the same trial today would no longer render the defendant eligible for the death penalty.” *Saylor*, 808 N.E.2d at 647.

18. Trial Rule 60(B)(8) requires the motion be brought within a “reasonable time.”

The determination of what constitutes a reasonable time varies with the circumstances of each case. *Kessen v. Graft*, 694 N.E.2d 317, 321 (Ind.Ct.App.1998), *trans. denied*. Prejudice to the party opposing the motion and the basis for the moving party's delay are relevant to the question of timeliness. *Id.*

In re 2005 Tax Sale Parcel No. 24006-001-0022-01, 898 N.E.2d 349, 354–55 (Ind. Ct. App. 2008). “In ruling on a T.R. 60(B) motion, the trial court must balance the alleged injustice suffered by the party moving for relief against the interests of the winning party and societal interest in the finality of litigation.” *Evans v. Evans*, 946 N.E.2d 1200, 1206 (Ind. Ct. App. 2011).

19. Cocoran has brought this motion within a reasonable amount of time given the 2021 opinion in *Isom* which changed the legal landscape. Courts consider more than just time when determining whether a Trial Rule 60(B) motion was filed in a “reasonable time.” “The passage of time alone is not enough to warrant the denial of a motion on the basis of timeliness.” *State v. Collier*, 61 N.E.3d 265, 268 (Ind. 2016) (citing *See Fairrow v. Fairrow*, 559 N.E.2d 597 (Ind.1990) (This Court granted relief eleven (11) years after the judgment due to the unusual circumstances of the case.))). Courts then look to the

circumstances of the case, the basis for the delay in filing the motion, and the potential prejudice other party. *Collier*, 61 N.E.3d at 468.

20. Any prejudice the State of Indiana may suffer is outweighed by the “injustice” suffered by Corcoran. Corcoran, who is gravely mentally ill is facing execution. These two factors, which will be discussed below, offset any prejudice the State may suffer by having to litigate a post-conviction case that it should have had to litigate years ago had Corcoran’s mental illness not severely interfered with his ability to sign his post-conviction petition in a timely manner.

21. And as to finality of litigation, the Indiana Supreme Court has addressed this in a previous death penalty case when it announced, “Finality and fairness are both important goals. When faced with an apparent conflict between them, this Court unhesitatingly chooses the latter.” *State v. Huffman*, 643 N.E.2d 899, 901 (Ind. 1994).

B. Extraordinary or exceptional circumstances justify relief.

22. Exceptional circumstances warranting relief exist. First, this is a death penalty case and “death is different.” These words appear frequently in the analysis of convictions resulting in capital sentences – convictions which are subject to heightened scrutiny. *Gregg v. Georgia*, 428 U.S. 153, 188 (1976); *Wrinkles v. State*, 915 N.E.2d 963, 973 (Ind. 2009) (Boehm, J., dissenting); *State v. Azania*, 865 N.E.2d 994, 1012 (Ind. 2007) (Boehm, J., dissenting); *Williams v. State*, 793 N.E.2d 1019, 1033 (Ind. 2003) (Rucker, J., dissenting). The fact this

is a death penalty case is, on its own, an extraordinary circumstance justifying relief.

23. The Indiana Supreme Court has previously made exceptions to the general rule when fairness is at issue in a death penalty case. The Indiana Supreme Court stated:

With due respect for the doctrine of *res judicata* this Court has always maintained the option of reconsidering earlier cases in order to correct error. “A court has the power to revisit prior decisions of its own or of a coordinate court in any circumstance, although as a rule courts should be loathe to do so in the absence of extraordinary circumstances such as where the initial decision was ‘clearly erroneous and would work manifest injustice.’” *State v. Lewis* (1989), Ind., 543 N.E.2d 1116 (quoting *Christianson v. Colt Industries Operating Corp.* 486 U.S. 800, 817, 108 S.Ct. 2166, 2178, 100 L.Ed.2d 811, 831 (1988)). Finality and fairness are both important goals. When faced with an apparent conflict between them, this Court unhesitatingly chooses the latter.

State v. Huffman, 643 N.E.2d 899, 901 (Ind. 1994). A similar result should be reached in Corcoran’s capital case.

24. Second, it is undisputed that Corcoran is severely mentally ill and has been diagnosed with paranoid schizophrenia [T 2701; PCR T 17, 48, 66]. His mental illness and mental health problems predated the capital offense. The evidence presented at trial revealed others saw Corcoran was different even as a child [T 2247, 2251, 2349]. He was secluded and it was hard to communicate with him [T 2251-52, 2348]. He had few, if any, friends [T 2251]. He even put an alarm on his bedroom door to alert him if the door shut [T 2252].

25. Around the time of the offense, his illness manifested in increasing paranoia. He continued to isolate himself and not engage with others [T 1973-74, 2247]. He lived in a home with his brother, his sister and her fiancée. Every week Corcoran would accuse his siblings of stealing his money [T 2677] and talking about him [T 1974-76, 2674-75]. The accusations were untrue, but to Corcoran, they were reality because he could not differentiate between his delusions and what was real. A few months before the offense, Corcoran felt compelled to install a security system on his bedroom door to ensure no one entered his room [T 1976]. The system was controlled by a keypad. Corcoran changed the code every day [T 1977]. There was a photocell in his room that likely acted as a motion detector [T 1904]. Corcoran also complained of problems sleeping [T 2676-77]³.

26. Corcoran has repeatedly refused to act in a competent manner which resulted in lost opportunities to save his life throughout this case and permit the State to assist in his suicide. The State offered a life sentence if

³ The fact that Corcoran was experiencing a “sleep disorder” prior to the offense is noteworthy. At sentencing, Dr. Phillip Coons testified Corcoran’s mention of the sleep disorder revealed Corcoran’s delusions. At the hearing to determine whether Corcoran was competent to waive his post-conviction proceedings, three mental health experts testified. Each determined Corcoran was not competent to waive his appeals and be executed [PCR T 13, 55, 59, 66]. Corcoran suffers from paranoid schizophrenia [PCR T 11, 17, 48, 66]. All three testified that Corcoran’s decision-making on this issue was not rational but, instead, based on delusions that the Department of Correction is torturing him with an ultrasound machine and his false belief he has a sleep disorder [PCR T 12-14, 49, 53, 62, 6-69].

Corcoran would accept a plea or waive jury.⁴ He refused⁵ and only then did the State file a request for the death penalty two days later. At sentencing, he stated he wanted to waive all his appeals. On direct appeal, inconsistent with his insistence to have a jury determine guilt, he only permitted his attorneys to raise sentencing issues.

27. The post-conviction record speaks for itself. Again, it must be noted this Court held: “The State concedes that Petitioner is mentally ill.” [PCR A 242]. At the previous competency hearing, this Court noted that “[t]he State of Indiana has conceded that the Defendant suffers from mental illness, and I think that is probably a wise concession, gentlemen, as the evidence that was presented at the competency hearing as well as the evidence presented at Mr. Corcoran’s trial was that he suffers from a mental disease or defect of mental illness.” [PCR R 4]. This Court recognized Corcoran was mentally ill, adding “that has never been the issue, folks, whether or not Mr. Corcoran suffers from mental illness.” *Id.* at 5.

⁴ Corcoran had no defense to the crimes. The first sentence of his opening statement was “Joseph Corcoran was responsible for the four shootings [the prosecutor] was just describing.”

⁵ The extent to which Corcoran’s thought processes affected his ability to assist counsel was revealed during a post-conviction competency evaluation [PCR T 20-21]. Corcoran was asked what information a person would need to know to decide whether to go to trial and risk a 10-year sentence versus accept a plea agreement for 6 months [PCR T 20]. Corcoran could not think of a single piece of information he would need to know to make that decision [PCR T 20]. The expert explained Corcoran’s answer unveiled Corcoran’s inability to assist counsel [PCR T 20-21].

28. Equally as important is the fact that a regional consensus has emerged against executing the severely mentally ill has occurred in the past few years. Every other contiguous death penalty state in this area of the Midwest has banned the death penalty for the seriously mentally ill.⁶

29. Although Indiana has not yet adopted a similar statute, the actions of the State of Indiana in a recent death penalty case conform to the trend. On January 24, 2024, the Marion County Prosecutor withdrew the death penalty request for a defendant who killed a police officer. *State v. Dorsey*, Cause No. 49D32-2004-MR-013622. The State explained that “The United States Constitution forbids the execution of mentally ill defendants.” Therefore, “After reviewing the psychiatric evaluations prepared by the Court-appointed doctors, the State has determined that Defendant is constitutionally ineligible to receive the death penalty.” [Attached - State’s Motion to Dismiss Request for Death Sentence, filed January 24, 2024].

⁶ In 2019, the Ohio legislature passed a pro-life law which went into effect in early 2021. Ohio’s statute prohibits the imposition or implementation of the death penalty for defendants who have been diagnosed with a severe mental illness, such as schizophrenia or schizoaffective disorder, and whose mental illness “significantly impaired the person’s capacity to exercise rational judgment in relation to the person’s conduct” regarding conforming his or her conduct to the law or appreciating the nature, consequences, or wrongfulness of his or her conduct. Ohio Rev. Code §§ 2929.05 (A)(1)(a)(i) and (ii) (2019). Kentucky followed in early 2022 with its pro-life law, exempting from the death penalty offenders with “active symptoms and a documented history, including a diagnosis,” of one of the listed mental illnesses, including schizophrenia or schizoaffective disorder. KRS §§ 532.130 (3)(a)(1) & (2) (2022). An offender found to fit those criteria “shall not be subject to execution.” KRS § 532.140. Illinois banned the death penalty altogether in 2011. The death penalty has violated Michigan’s constitution since 1847.

C. Corcoran has alleged a meritorious claim.

30. Corcoran has raised numerous meritorious claims. The initial post-conviction petition filed by Corcoran's counsel is 49 pages. Some of the claims raised are a) trial counsel was ineffective at all stages of the proceedings, b) appellate counsel was ineffective, c) the prosecutor committed misconduct during the trial which placed Corcoran in grave peril, d) the procedure was inadequate and did not follow the statute when Corcoran waived his appellate rights, e) he was denied meaningful appellate review to which he was entitled, f) Corcoran has been and continues to be incompetent, and g) numerous fundamental and structural errors rendered his convictions and sentence unreliable.

31. One claim raised in the petition must be litigated before Corcoran is executed because it cannot be waived. That claim is that he was incompetent when he was tried. A person who is incompetent cannot stand trial as a matter of due process. *Smith v. State*, 443 N.E.2d 1187, 1188–89 (Ind. 1983) (citing *Drope v. Missouri*, 420 U.S. 162 (1975); *Pate v. Robinson*, 383 U.S. 375(1966); *Dragon v. State*, 270 Ind. 223 (1979). Competency cannot be waived. *Pate*, *supra*; *Dragon*, *supra*.

32. Although there was a motion for competency filed early in his case, counsel withdrew it before it was litigated [T 50, 106]. Corcoran's trial was almost two years later.

33. The expert who evaluated Corcoran closest in time to the trial was Dr. Philip Coons, a general and forensic psychiatrist [T 2694]. The defense hired Dr. Coons to evaluate Corcoran after trial but before sentencing [T 2732]. At the sentencing hearing, Dr. Coons diagnosed Corcoran with paranoid schizophrenia, a psychotic condition where there is a “significant break or distortion of reality” and “usually would involve hallucinations or delusions, which are false beliefs which are persistent.” [T 2699, 2701, 2703]. The following exchange occurred about Dr. Coon’s opinion on competency:

Q: Doctor, do you believe that due to his diagnosed mental illness that the defendant was unable to competently assist his counsel, in a real sense?

A: Yes, in retrospect I believe that he had a great deal of trouble assisting his counsel.

[T 2728].

34. Regardless of what the pre-trial competency evaluations showed, Corcoran’s competency at the time of trial and sentencing is in doubt. “The state of mind respecting the defendant's competency to stand trial is recognized as subject to change over time.” *Ferry v. State*, 453 N.E.2d 207, 211 (Ind. 1983) (citing *Malo v. State*, 266 Ind. 157 (1977)). The evidence in the record reveals that Corcoran was not competent during the expert examination closest in time to the trial and sentencing.

35. During the trial and sentencing, there were sufficient indicators to suggest he was incompetent. The parties and trial court did not fulfill their duties and follow the statute, I.C. 35-36-3-1, to have Mr. Corcoran evaluated at

the various points when there were "reasonable grounds" to believe that Mr. Corcoran was not competent.

36. “[T]he question of a defendant's competency to stand trial may be raised at any time, including long after trial, conviction, and sentencing have occurred.” *Smith*, 443 N.E.2d at 1188-89. The issue cannot be waived and can be raised at this point. A determination of Corcoran’s competency at the time of trial must be established before a death sentence can be carried out. Without it, Corcoran will be denied his state and federal constitutional rights to due process and his sentence is unreliable.

37. Because Corcoran’s claims are meritorious, dismissal of the petition is inappropriate, and his signed petition must be reinstated.

Corcoran, by counsel, respectfully requests this Court vacate its September 20, 2003, Order Striking Corcoran’s Petition for Post-Conviction Relief and its June 9, 2005, Order dismissing Corcoran’s signed post-conviction petition under Indiana Trial Rule 60(B) and reinstate his petition.

Respectfully Submitted,

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Certificate of Service

I hereby certify that a true copy of the foregoing has been delivered through IEFS to the following, this 24th day of October, 2024.

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