US Supreme Court

Case: ***Madison v. Alabama*, ___ U.S. ___ (2019)**, No. 17-7505
Date: February 27, 2019 **Votes:** 5-3 (no Kavanaugh)

Opinion: Kagan (Roberts, Ginsburg, Breyer, Sotomayor) **Dissents:** Alito (Thomas, Gorsuch)

Tags: Death penalty, 8th Amendment, cruel and unusual punishment, remembering, rational understanding, dementia, incompetency, psychotic delusions

Question(s) Presented:

1. Does the Eighth Amendment bar the execution of someone who does not remember committing the crime for which he has been sentenced?
2. Does the Eighth Amendment's prohibition against cruel and unusual punishment require that a person with dementia receive a stay of execution, if he has no memory of his crime, just as would be the case for someone with psychotic delusions?

Holdings:

1. Standards of *Ford* and *Panetti* (for stay of execution) may be met if prisoner cannot remember committing his crime, if there is a *combination* of mental factors involved. (IOW, it's not JUST the memory loss that's at issue here.)
2. It does not matter what disease is implicated in the memory loss (psychotic delusions/dementia/etc.).
3. Vacated and remanded: not sure if State court committed the legal error of limiting stays only to people deemed delusional rather than including people with dementia.

Rationale:

1. "[A] person lacking such a memory may still be able to form a rational understanding of the reasons for his death sentence." (1)
2. "[E]ither condition may—or, then again, may not—impede the requisite comprehension of his punishment." (1)
3. "What matters is whether a person has the 'rational understanding' *Panetti* requires—not whether he has any particular memory or any particular mental illness." (9)
4. "*Panetti's* standard focuses on whether a mental disorder has had a particular *effect* . . . Conversely, that standard has no interest in establishing any precise *cause*." (12)

Facts: Madison convicted of capital murder in 1985 for killing a police officer during a domestic dispute. Placed on AL's death row. Suffered series of strokes in 2015 and 2016, resulting in vascular dementia.

Legal History, Prior Appeals & Trial Court Input:

- **1985:** Convicted of capital crime for murdering police officer. Sentenced to death.
- **2015-2016:** Suffered strokes resulting in vascular dementia.
- **2016:** Petitioned AL for stay of execution because of dementia; was refused. State court believed that *Panetti* required a person to have psychotic delusions as cause of amnesia, and dementia didn't cut it.
- **2017:** Sought habeas relief in District Court, which rejected petition.
- **2017:** CA Eleventh Circuit found that state court's ruling unreasonably applied federal law and rested on an unreasonable determination of the facts.
- **2017:** SCOTUS reversed Eleventh Circuit (*Dunn v. Madison*, 583 U.S. __): incompetence does not rest in simple failure to remember the crime. (Using AEDPA because habeas case, so deferred to state court bcz no decisions yet that were flagrantly violated by their interpretation.)
- **2017:** Appealed execution but was dismissed.
- **2018:** Found competent to be executed by AL court because did not show insanity.
- **2018:** Filed stay of execution with SCOTUS; petitioned certiorari to examine legal question. Both granted.

Attorneys' Arguments:

- **Bryan Stevenson (for Appellant):**
  - "[T]his Court has never sought to constrain the world of maladies that can give rise to a finding that a prisoner is incompetent to be executed." (from Pet. For Cert. 25)
  - Execution can't go forward now because state court's decision was tainted by legal error: they limited the causes of memory loss to psychotic delusions, ruling out dementia.
- **(for AL):**
  - *Ford* and *Panetti* are not relevant here, because Madison is not suffering from gross delusions.
  - State court didn't rely on an incorrect view of psychotic delusions v. dementia (Kagan: "But we come away at the least unsure whether that is so—especially given Alabama's evidence and arguments in the state court." 14).

Appeals to Statute & Precedent:

- **Anti-terrorism and Effective Death Penalty Act (1996):** sets standard for when a prisoner is incompetent to be executed; requires deference to state court in habeas cases unless there's "an unreasonable application of federal law as clearly established at the time by decisions of this Court" (Alito dissenting, at 21).
- ***Ford v. Wainwright*, 477 U.S. 399 (1986):** 8th Amendment's ban on cruel and unusual punishment precludes executing a prisoner who has lost his sanity after sentencing.
- ***Panetti v. Quarterman*, 551 U.S. 930, 958-959 (2007):** State may not execute prisoner whose "mental state is so distorted by a mental illness" that he lacks a "rational understanding" of "the State's rationale for [his] execution." Improved on *Ford* by setting out a standard for competency.

Dicta:

- Re. *Ford v. Wainwright* & prohibition against execution of a prisoner who has lost his sanity: "Among the reasons for that time-honored bar, the Court explained, was a moral 'intuition' that 'killing one who has no capacity' to understand his crime or punishment 'simply offends humanity.' *Id.*, at 407, 409." (2)
- "The resulting rule, now stated as a matter of constitutional law, held 'a category of defendants defined by their mental state' incompetent to be executed.' *Id.*, at 419." (2)
- "The dissent is in high dudgeon over our taking up the second question, arguing that it was not presented in Madison's petition for certiorari. . . . But that is incorrect. The petition presented two questions—the same two we address here." (8-9, n.3)
- (Commenting on how a person may have *understanding* without *memory*:) "Do you have an independent recollection of the Civil War? Obviously not. But you may still be able to reach a rational—indeed, sophisticated—understanding of that conflict and its consequences. Do you recall your first day of school? Probably not. But if your mother told you years later that you were sent home for hitting a classmate, you would have no trouble grasping the story. And similarly, if you somehow blacked out a crime you committed, but later learned what you had done, you could well appreciate the State's desire to impose a penalty." (10)
- "Echoing *Ford*, *Panetti* reasoned that execution has no retributive value when a prisoner cannot appreciate the meaning of a community's judgment." (11)
- "*Ford* and *Panetti* stated that it 'offends humanity' to execute a person so wracked by mental illness that he cannot comprehend the 'meaning and purpose of the punishment.' 477 U.S., at 407; 551 U.S., at 960; see *id.*, at 958. But that offense to morality must be much less when a person's mental disorder causes nothing more than an episodic memory loss. Moral values do not exempt the simply forgetful from punishment, whatever the neurological reason for their lack of recall." (11)
- "If that [memory] loss combines and interacts with other mental shortfalls to deprive a person of the capacity to comprehend why the State is exacting death as punishment, then the *Panetti* standard will be satisfied." (11)
- "And most important, *Panetti* framed its test, as just described, in a way utterly indifferent to a prisoner's specific mental illness. The *Panetti* standard concerns, once again, not the diagnosis of such illness, but a consequence—to wit, the prisoner's inability to rationally understand his punishment." (13)
- "The sole question on which Madison's competency depends is whether he can reach a 'rational understanding' of why the State wants to execute him." (17)
- "Some evidence in that record [of state court proceedings], including portions of the experts' reports and testimony, expressly reflects an incorrect view of the relevance of delusions or memory; still other evidence might have implicitly rested on those same misjudgments." (17)

Concurrence/Dissent: Alito

- "What the Court has done in this case makes a mockery of our Rules." (Uh-oh. This is the opening line! Hence Kagan's "high dudgeon" comment!) [Alito, 1]

- His evaluation is that at OAs Bryan Stevenson "abruptly changed course" on the question of whether the State could execute someone who didn't remember his crime, "[p]erhaps because he concluded (correctly) that petitioner was unlikely to prevail on the question raised in his petition, he conceded that the argument advanced in his petition was wrong, and he switched to an entirely different argument" (re. dementia v. psychotic delusions). (Alito, 1) (As Kagan pointed out, Alito is wrong here—the petition covered both questions. But Alito says, "there is no mention whatsoever of this argument in the petition—not even a hint.)
- "Counsel's tactics flagrantly flouted our Rules." (cheez, telling off Bryan Stevenson!!) (Alito, 2)
- "Our whole certiorari system would be thrown into turmoil if we allowed counsel to obtain review of one question and then switch to an entirely different question after review is granted." (Alito, 2)
- Ought to dismiss review as improvidently granted—"Instead, the majority rewards counsel's trick." (Alito, 2) [Cheez, did Alito read the same court record and petition??]
- Okay, he lets up a little—or says he would, if he were really magnanimous (which he isn't today): "The final phrase in question two and certain passages in the petition, if read with an exceedingly generous eye, *might* be seen as a basis for considering whether the evidence in the state-court record shows that petitioner's dementia rendered him incapable of having a rational understanding of his reason for his execution." (Alito, 5)
- Cheez, he gets so into it he writes a footnote that goes on for a page and a half!
- Conclusion: "Petitioner has abandoned the question on which he succeeded in persuading the Court to grant review, and it is highly improper for the Court to grant him relief on a ground not even hinted at in his petition." (Alito, 13)

Commentary:

- "Because the case now comes to us on direct review of the state court's decision (rather than in a habeas proceeding), AEDPA's deferential standard no longer governs." (8)
    - "Today, we address the issue straight-up, sans any deference to a state court." (10)
- "In prior stages of this case, as we have described, the parties disagreed about those matters. See *supra*, at 4-8. But at this Court, Madison accepted Alabama's position on the first issue and Alabama accepted Madison's on the second. . . . And rightly so. As the parties now recognize, the standard set out in *Panetti* supplies the answers to both questions." (8-9)
- At last round, when SCOTUS reviewed 11th CA's decision in *Dunn v. Madison* (the one they overturned because of AEDPA deference), RBG w/ Breyer and Sotomayor noted in a continuance that the legal question that hadn't been addressed yet by the Court "would warrant full airing" if "[a]ppropriately presented," *Dunn*, 583 U.S. at ___ (slip op., at 4).

Legal Writing Notes:

- **Page number spreads:** 958–959
- Does not italicize "See": "See *id.*, at 406-409."
- ***Ibid. & id.*; cite to concurrence:**
  "Another rationale rested on the lack of 'retributive value' in executing a person who has no comprehension of the meaning of the community's judgment. *Ibid.*; see *id.*, at 421 (Powell, J., concurring in part and concurring in judgment) (stating that the death penalty's 'retributive force[] depends on the defendant's awareness of the penalty's existence and purpose')." (2)
- Comma after *id.* here, but not in HLR article!
- ***Supra:*** See *supra*, at 4-8.
- ***Post:*** See *post*, at 1-6.
- **Quoting case quoting a case:**
  "Echoing *Ford*, *Panetti* reasoned that execution has no retributive value when a prisoner cannot appreciate the meaning of a community's judgment. See 551 U.S., at 958-959 (citing 477 U.S., at 407-408); *supra*, at 3." (11)
- **Alito error?** – "The Eleventh Circuit interpreted those cases to mean that petitioner could not be executed because he did not remember killing his victim, Mobile, Alabama, police officer Julius Schulte." (21) [Unwarranted comma after AL?]
- **Quoting an opinion so new it only has a "slip opinion":**
  "*Dunn*, 583 U.S., at ___ (slip op., at 4)."