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USA: Supreme Court tightens standard on 'competence' for execution

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A prisoner's awareness of the State's rationale for an execution is not the same as a rational understanding of it.

US Supreme Court, *Panetti v. Quarterman*, 28 June 2007

In a 5-4 decision issued on 28 June 2007, the United States Supreme Court blocked the execution of Scott Panetti, a Texas death row inmate who suffers from severe delusions. Amnesty International welcomes the ruling as a step towards ending the use of the death penalty against this and other criminal offenders with serious mental illness in the USA.¹ The Supreme Court's ruling also drew attention once more to the shoddy standards of capital justice in Texas, which accounts for more than a third of executions in the USA and has routinely contravened international standards in sending prisoners to its death chamber.

The central question asked of the Supreme Court by the Panetti case was, in effect, to clarify a ruling it made 21 years earlier. In *Ford v. Wainwright* in 1986, the Court had affirmed that the execution of the insane violates the US Constitution's Eighth Amendment ban on "cruel and unusual punishments". However, the *Ford* ruling neither defined competence for execution, nor did a majority mandate specific procedures that must be followed by the individual states to determine whether an inmate is legally insane. The result over the ensuing two decades has been the adoption of different standards in different states, judicial uncertainty, and minimal protection for seriously mentally ill inmates.² The *Panetti* ruling has the potential, at last, to provide additional protection.

Scott Panetti shot his parents-in-law to death in 1992, several years after he was first diagnosed with schizophrenia. He had been hospitalized for mental illness, including schizophrenia and bipolar disorder, in numerous different facilities before the crime. There is compelling evidence that he was psychotic at the time of the shootings, and that he was incompetent to stand trial. Not only was he tried, however, he was allowed to act as his own lawyer, which he did dressed as a cowboy and presenting an often rambling narrative in his defence. His trial has variously been described as a "circus", a "joke", a "farce", "not moral", and a "mockery", by various lawyers, doctors and family members who attended.

On 4 February 2004, Scott Panetti was 24 hours from execution in the Texas death chamber when a federal court issued a stay to give the state judge, who had set the execution date, time to consider Panetti's mental state. The judge had earlier, without a hearing, dismissed a defence motion claiming that Panetti was incompetent for execution. The Texas Court of Criminal Appeals had refused to intervene on the grounds that under state law – enacted some

¹ The organization has been campaigning on Scott Panetti's case since 2004. See USA: 'Where is the compassion?' *The imminent execution of Scott Panetti, mentally ill offender*, AMR 51/011/2004, January 2004, [http://web.amnesty.org/library/pdf/AMR510112004ENGLISH/\\$File/AMR5101104.pdf](http://web.amnesty.org/library/pdf/AMR510112004ENGLISH/$File/AMR5101104.pdf).

² Also, USA: *The execution of mentally ill offenders*, AMR 51/003/2006, January 2006, [http://web.amnesty.org/library/pdf/AMR510032006ENGLISH/\\$File/AMR5100306.pdf](http://web.amnesty.org/library/pdf/AMR510032006ENGLISH/$File/AMR5100306.pdf).

13 years after the *Ford* ruling – it would only have jurisdiction to review such a case after the lower court had determined the prisoner to be incompetent. Such are the obstacles faced by lawyers seeking to stop the Texas conveyor belt of death.

With the case back in his court, the state judge again failed to hold a hearing. Instead he appointed two mental health experts who reported back to him that Scott Panetti was competent for execution, and claimed that the prisoner's bizarre behaviour was calculated and manipulative. Ignoring the defence lawyer's objections, and his motions requesting a competency hearing and funding to hire his own mental health expert, the judge dismissed the case with a finding that Panetti had failed to show that he was incompetent for execution.

The case went back to the federal courts. A District Court judge ruled that the state proceedings had been constitutionally inadequate, but ruled that, under the Fifth Circuit Court of Appeals precedent relating to *Ford* claims (the Fifth Circuit is the federal circuit which has jurisdiction over Texas cases), Panetti had not shown incompetence. The judge held that under the Fifth Circuit standard it was sufficient that Panetti knew that he had committed two murders; that he would be executed; and that the reason the state had given for that execution was his commission of the murders. The court rejected the defence lawyer's argument that, under the *Ford* ruling, the Eighth Amendment forbids the execution of a prisoner who lacks a *rational* understanding of the State's reason for the execution. According to various experts presented by the defence, Panetti had no such rational understanding and believed instead that, notwithstanding the State's purported reason for the execution, its real motivation was to punish him for preaching the Gospel. The Fifth Circuit affirmed the District Court's ruling on 9 May 2006.

The Supreme Court agreed to take the case and, after rejecting the state's argument that the *Ford* claim was procedurally barred from federal review,³ it overturned the Fifth Circuit's ruling. Firstly, however, it levelled strong criticism at Texas. It found that the Texas court had failed to provide Scott Panetti with the minimum process required by *Ford v. Wainwright*. It appears, the Supreme Court wrote, that "the state court on repeated occasions conveyed information to petitioner's counsel that turned out not to be true; provided at least one significant update to the State without providing the same notice to petitioner; and failed in general to keep petitioner informed as to the opportunity, if any, he would have to present his case." The Supreme Court also found that the state court made a constitutionally impermissible error in failing to provide Panetti with "an adequate opportunity to submit expert evidence in response to the report filed by the court-appointed experts". These state-level procedural deficiencies "constituted a violation of [Panetti's] federal rights", and meant that the Supreme Court would not defer to the state court's finding of competency.

The Supreme Court then turned to the question of the federal Fifth Circuit's standard for competency, and found that it "rests on a flawed interpretation of *Ford*" and that it "is too restrictive to afford a prisoner the protections granted by the Eighth Amendment". The Court acknowledged that its *Ford* decision 21 years earlier had "not set forth a precise standard for competency" and had discussed the standard "at a high level of generality". However the Court noted that the various Justices' opinions that made up the *Ford* ruling "nowhere indicate that delusions are irrelevant to comprehension or awareness if they so impair the

³ The state argued that, under the Antiterrorism and Effective Death Penalty Act (AEDPA) of 1996, the *Ford* claim was procedurally barred from review as a successor appeal that should have been raised earlier. The *Panetti* ruling noted that acceptance of this argument would force prisoners either to forgo the opportunity to raise a *Ford* claim in federal court, or to file such a claim in their first federal habeas petition, even if it was premature (e.g. their mental illness could subsequently deteriorate). "Instructing prisoners to file premature claims", the Supreme Court stated, "does not conserve judicial resources, reduce piecemeal litigation, or streamline federal habeas proceedings", the purported aims of the AEDPA.

prisoner's concept of reality that he cannot reach a rational understanding of the reason for the execution."

The Fifth Circuit's standard, the Supreme Court stated, puts at risk the principles that lie behind the *Ford* ruling:

"A prisoner's awareness of the State's rationale for an execution is not the same as a rational understanding of it. *Ford* does not foreclose inquiry into the latter... [Panetti's] submission is that he suffers from a severe, documented mental illness that is the source of gross delusions preventing him from comprehending the meaning and purpose of the punishment to which he has been sentenced. This argument, we hold, should have been considered... To refuse to consider evidence of this nature is to mistake *Ford's* holding and its logic. Gross delusions stemming from a severe mental disorder may put an awareness of a link between a crime and its punishment in a context so far removed from reality that the punishment can serve no proper purpose."

The Supreme Court reversed the Fifth Circuit's judgment and remanded the case for further proceedings consistent with the *Panetti* ruling. The majority wrote: "The underpinnings of [Panetti's] claims should be explained and evaluated in further detail on remand. The conclusions of physicians, psychiatrists, and other experts in the field will bear upon the proper analysis. Expert evidence may clarify the extent to which severe delusions may render a subject's perception of reality so distorted that he should be deemed incompetent".

The State of Texas, approaching its 400th execution since 1982 (no other state has yet executed 100 inmates since resumption of judicial killing in the USA in 1977), does not give up easily in death penalty cases. Perhaps emboldened by the four dissenting Justices who accused the majority of "bend[ing] over backwards to allow Panetti to bring his *Ford* claim", and of issuing a "half-baked holding that leaves the details of the insanity standard for the District Court to work out", the Texas authorities have said that they will continue to seek Scott Panetti's execution. The Solicitor General of Texas, the official responsible for the state's appeals before the state and federal courts, is quoted as saying that the Supreme Court's ruling "will invite abuse from capital murderers, subject the courts to numerous false claims of incompetency and even further delay justice for the victims' families. Texas will now return for further proceedings, where we will continue working to carry out the jury's unanimous capital sentence for Scott Louis Panetti's premeditated double homicide".⁴

The suggestion that the defendant or inmate is faking or exaggerating their mental illness is a position that has frequently been adopted by the state. Texas adopted this approach, for example, in the case of Monty Delk before putting him to death in February 2002. If Monty Delk was indeed faking his serious mental illness, as the state claimed, he fooled many mental health professionals. He also maintained the "act" for many years and right up to the point of his death. The Texas prison authorities recorded his final statement before being executed as "I've got one thing to say, get your Warden off this gurney and shut up. I am from the island of Barbados. I am the Warden of this unit. People are seeing you do this".

The international community will now watch to see how Texas responds to the *Panetti* ruling. Amnesty International urges the state to use this opportunity to turn over a new leaf.

The five Justices in the *Panetti* majority noted that there is "much in the record to support the conclusion that [Panetti] suffers from severe delusions". However, it also acknowledged that "a concept like rational understanding is difficult to define". In the *Ford* ruling two decades earlier, four of the Justices had similarly noted that although "the stakes are high", the evidence of whether a prisoner is incompetent for execution "will always be imprecise". A

⁴ *Supreme Court blocks execution of delusional killer*. New York Times, 28 June 2007.

fifth Justice had added that “unlike issues of historical fact, the question of [a] petitioner’s sanity calls for a basically subjective judgment.” In 2005, the US Court of Appeals for the Fourth Circuit reiterated this when it said “undoubtedly, determining whether a person is competent to be executed is not an exact science”. In other words, there will always be errors and inconsistencies, at least on the margins. Arbitrariness in the application of the death penalty should be abhorrent even to those who do not oppose this punishment. In the end, there is only one solution – abolition.

And in the end, the *Panetti* ruling is one more example – albeit this time a rights-protective one – of a Court “tinkering with the machinery of death”, in the words of the late Supreme Court Justice Harry Blackmun. The USA should recognize, as Justice Blackmun did 15 years ago, that the USA’s modern experiment with the death penalty has failed.⁵

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⁵ See *USA: The experiment that failed. A reflection on 30 years of executions* (AMR 51/011/2007, January 2007, <http://web.amnesty.org/library/Index/ENGAMR510112007>).