
*Supreme Court of the
United States*

JULIET YACKEL,
Petitioner,
v.

STATE OF SOUTH DAKOTA, SOUTH DAKOTA
DEPARTMENT OF CORRECTIONS, & DENNY KAEMINGK,
SECRETARY, SOUTH DAKOTA DEPARTMENT OF
CORRECTIONS,
Respondents.

**REPLY TO STATE'S BRIEF IN OPPOSITION
CAPITAL CASE: IMMINENT EXECUTION
2:30 p.m. ET on October 29, 2018**

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REPLY

Rodney Berget lacks the requisite capacity to be executed, as well as the requisite capacity to protect his own interests. Petitioner satisfied the “one necessary condition for ‘next friend’ standing in federal court,” a showing “that the real party in interest is unable to litigate his own cause due to mental incapacity, lack of access to court, or other similar disability.” *Whitmore v. Arkansas*, 495 U.S. 149, 165 (1990); *see also State v. Bordelon*, 33 So. 3d 842, 857 (2009) (noting intellectual disability would warrant next friend standing to challenge a sentence of death).

The State’s assertion of Mr. Berget’s capacity rests on a fundamentally flawed determination by the lower court. It is undisputable that the court’s opinion overtly disregards the standards advanced by this Court under *Hall* and *Moore*. Yet, Mr. Berget will have no recourse from that, and no way to protect his rights, because his attorney has abandoned his ethical duties as counsel. *See Logan v. Zimmerman Brush Co.*, 455 US 422 (1982).

Mr. Berget’s intellectual disability satisfies the standard under *Whitmore*. He lacks the capacity to represent himself.

This Court should look with great skepticism on the affidavit proffered by trial counsel. That attorney failed to present any evidence of Mr. Berget’s intellectual disability and now stands to bury that mistake with his client. *See Christeson v. Roper*, 135 S. Ct. 891, 995 (2015) (recognizing a conflict where counsel’s “reputational and professional interests” are at odds with their client’s). His execution is

categorically unconstitutional and this Court should intervene.

CONCLUSION

The Court should grant the Petition and stay the execution.

Respectfully,

/S/ ELLIOT SCHERKER

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