Case No.24A355

24-5074

CAPITAL CASE

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

STATE OF MISSISSIPPI,
Respondent.

v.

JAMES COBB HUTTO,
Applicant.

ON APPEAL FROM THE SUPREME COURT OF MISSISSIPPI

PETITION FOR A WRIT OF CERTIORARI

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CAPITAL CASE

Question Presented

James Cobb Hutto III has long exhibited cognitive difficulties, likely the product of his difficult childhood and former experience as a Mixed Martial Arts (MMA) combatant. Arrested for the murder of the victim in this case, his relationship with his trial counsel (who was also his appellate counsel) was difficult. Hutto refused to cooperate with his counsel's efforts to assess his competency. Later, after having been convicted at trial and unsuccessfully challenging his sentence on direct appeal, he was represented by post-conviction counsel from the Mississippi Office of Capital Post-Conviction Counsel. Hutto would not meet with these lawyers and so, once again, there were no successful efforts to have Hutto's competency assessed during his capital proceedings. It was only during his federal habeas proceedings, which were held in abeyance to allow counsel an opportunity to raise previously unexhausted claims in Mississippi state court, that Hutto finally submitted to limited psychological testing. Throughout these federal habeas proceedings, counsel has maintained that Hutto is incompetent to assist in the necessary investigation to develop and present his claims. The Mississippi Supreme Court has declared this issue moot since, it asserts, Hutto has no right to competency in post-conviction proceedings relying on its recent state case, *Powers v. State*, 371 So. 3d 629, 643 (Miss. 2023) (quoting Corrected En Banc Order, *Powers v. State*, No. 2017-DR-00696-SCT, at *1-2 (Miss. June 21, 2022). 1a.

The question before this Court is whether there is a Constitutional right to competency during the pendency of capital state-court collateral proceedings.

Parties to the Proceeding

All parties to this proceeding are listed in the caption.

Related Proceedings

The following are related proceedings:

The Mississippi Supreme Court denial of Petitioner's direct appeal. *James Cobb Hutto, III v. State of Mississippi*, 227 So.3d 963 (Miss. 2017).

The Mississippi Supreme Court's denial of Petitioner's petition for post-conviction relief. *James Cobb Hutto, III v. State of Mississippi*, 286 So. 3d 653 (Miss. 2019).

Petitioner's petition for a writ of habeas corpus. *James Cobb Hutto, III v. Cain*, C/A: 3:20-cv-00098-DPJ.

The Mississippi Supreme Court's denial of Petitioner's Motion for Leave to File Successive Petition for Post-Conviction Relief, No. 2017-DR-01207-SCT (filed July 25, 2024).

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Petition for Writ of Certiorari

Petitioner, James Cobb Hutto, III, respectfully petitions for a writ of certiorari to review the judgment of the Mississippi Supreme Court.

Opinion Below

The Mississippi Supreme Court's decision denying Hutto motion for leave to file successive petition for post-conviction relief from capital-murder and death sentence can be found at *James Cobb Hutto III v. State of Mississippi*, 391 So.3d 1192 (Miss. 2024).

Jurisdiction

The Mississippi Supreme Court affirmed Mr. Hutto's conviction and death sentence on May 11, 2017. *James Cobb Hutto, III v. State of Mississippi*, 227 So. 3d 963 (Miss. 2017). A petition for rehearing was denied on August 10, 2017. Petitioner then filed an application for post-conviction relief or in the alternative for leave to proceed in trial court with a petition for post-conviction relief on August 17, 2018. *James Cobb Hutto, III. v. State of Mississippi*, 2017-DR-01207-SCT. On October 3, 2019, the Mississippi Supreme Court denied Petitioner's post-conviction relief petition without granting an evidentiary hearing. After a timely filed petition for rehearing filed on October 17, 2019, the Mississippi Supreme Court denied rehearing on January 9, 2020.

On November 10, 2021, the District Court for the Southern District of Mississippi stayed Mr. Hutto's federal habeas proceeding to allow him to file a motion to be allowed to pursue a successor post-conviction relief proceeding in state court. *Hutto v. Cain*, No. 3:20-cv-98-DPJ (S.D. Miss. Nov. 10, 2021). On July 25, 2024, the Mississippi Supreme Court denied a timely filed motion for leave to file successive petition for post-conviction relief. Jurisdiction is invoked pursuant to 28 U.S.C. §1257(a).

Constitutional Provisions Involved

The Fifth Amendment to the United States Constitution provides, in pertinent part:

No person shall... be deprived of life, liberty, or property, without due process of law....

The Fourteenth Amendment to the United States Constitution provides, in pertinent part:

No State shall... deprive any person of life, liberty, or property, without due process of law....

Statement of Relevant Facts

On September 13, 2010, the Petitioner, James Cobb Hutto, III paid a daily fee to use the facilities at Heathplex, a community center providing exercise and weight-training opportunities for the citizens of Clinton, Mississippi. The Heathplex is located on the campus of Mississippi College. Hutto was a resident of Jasper, Alabama who happened to be staying in Clinton at a Comfort Inn while his ex-girlfriend (with whom he was staying) worked at the Celtic Festival in Jackson,

Mississippi. App. 1614. While at the Healthplex, Hutto met Ethel Simpson, an elderly widow and resident of Clinton. They spent some time together at the facility, and then Ms. Simpson offered to drive Hutto back to his hotel.

Later that evening, Ms. Simpson returned to the hotel to pick Hutto up. They had arranged to meet for drinks.

What Ms. Simpson could not have known, when she decided to foster this friendship with Hutto was that she was meeting a profoundly broken human being with a long, tortured history of sexual and physical abuse. Ms. Simpson did not know of Hutto's dominant family history of bipolar disorder. She also did not know of Hutto's organic brain damage caused by his participation in "ToughMan" competitions where amateur level fighters would pay fees to participate in loosely regulated mixed-martial arts competitions. Ms. Simpson's untimely death is the direct result of her encounter with a young man collapsing under the weight of a lifetime of family dysfunction and a genetic inability to cope with that stress that has rendered him incompetent. Even today, 14 years after his crimes and arrest, he remains incapable of assisting his lawyers in advancing claims to challenge his death sentence.

Hutto's capital trial was fundamentally unfair because he was incompetent during its pendency. He remains incompetent. Incapable of working with his attorneys, Hutto's behavior at his trial appeared bizarre and disruptive and offers a glimpse into the dysfunction that has pervaded his case and inhibited efforts to advance his claims to the courts. Dr. Storer, a forensic psychologist, who attempted a

pre-trial competency evaluation of Hutto never concluded he was competent to stand trial. Nevertheless, the trial court, without any probing assessment of Hutto, found him competent to stand trial when Hutto was absent from the courtroom. The State then used Hutto's strange behaviors to argue that he did not express any remorse for the death of Ms. Simpson, and as another reason to give him the death penalty.

A fair reading of the record in this case shows that Hutto has long had difficulties controlling his behavior during these proceedings. He acted out during his trial, and then he and his initial post-conviction counsel apparently lacked a relationship that would have provided an opportunity for them to discover and then raise the issue of his competency during the course of his initial post-conviction relief proceeding.

The record is replete with examples of Hutto's actions which clearly evinced significant cognitive problems. Even from the beginning of trial preparations, it was clear James Hutto had difficulty with impulse control. He elected not to attend some pre-trial status meetings, (October 12, 2012, Tr. 58, December 14, 2012, Tr. 62, January 28, 2013, Tr. 66, February 7, 2013, Tr. 132; and March 28, 2013, Tr. 178) and he acted out at others he attended. At a status hearing on April 5, 2012, he was removed from the courtroom. Tr. 20-21. At another hearing on June 18, 2012, Tr. 39-40, he continued to act out as he informed the trial court he "wasn't crazy." Tr. 42. Again, on August 31, 2012, he was removed from the courtroom. Tr. 50-53. Trial counsel informed the court that Hutto's conduct was unpredictable: "He's either the person who was in court today or he listens and talks or he refuses to come out

altogether." Tr. 25. He was made to leave the courtroom during a pre-trial hearing. Tr. 111-112. It appears he was able to sit still in the courtroom for nearly an hour before he lost his ability to control his impulses. Tr. 117. On March 14, 2013, Hutto attempted to enter a guilty plea but was unable to make it through the colloquy. The State then revoked the plea offer. Tr. 139-150.

It was clear from the beginning, also, that Hutto had difficulty working with mental health professionals. He was unable to participate in an assessment with a neuropsychologist. Tr. 161.

Hutto's difficulties in processing the environment of his own trial continued to be apparent throughout these events. During a hearing on April 15, 2013, he told the trial court that he wanted the death penalty. He attempted to spit on people. He informed the trial court he did not want to be present for jury qualifications and he was removed from the courtroom. Tr. 183-200.

After a competency hearing in which Dr. Storer, whose report concluded neither that Hutto was competent nor incompetent, the trial court concluded Hutto was competent. Tr. 223. Trial counsel remarked Hutto had ended his earlier attempt at a guilty plea "with no apparent reason." Tr. 224.

Hutto again acted out during his trial, rambling incoherently (Tr. 227 ("That's why French Camp lost. Your son got caught in the orgy. That's why they didn't win.")). Later, Hutto fell to the floor and appeared to have a heart attack. Tr. 253. He later asked to be removed from the hearing. Tr. 281. At a motion hearing on April 30, 2013, Hutto told everyone to make sure their insurance was paid up because they

would not be able to get into Hell without it. Tr. 315. On May 6, 2013, Hutto informed the trial court that he cannot hear very well because he has been hit in the head so many times. Tr. 393. He repeatedly informed the court that he could not hear. Tr. 399, 420, 469. At the beginning of his trial, Hutto wanted to leave the courtroom. Tr. 420. He wanted to leave the May 9, 2013 hearing. Tr. 474. He left the courtroom, during the trial, on May 13, 2013. Tr. 564. He reentered the courtroom during *voir dire*. Tr. 588.

During trial, the jury heard that, in Hutto's third statement to law enforcement, he told the police that he can flip over cars, walk on hot asphalt and not burn. He referred to himself as Lucifer and "prince of hell." Tr. 1599. He said Charles Manson could not tote his gym bag. Tr. 1600, 1812.

Hutto's irrational behavior continued through the trial. During his ex-girlfriend's testimony, he became agitated and was upset that Lawson (the ex-girlfriend) was not asked about a rape charge she filed against him, but then spent time in a hotel with him. He told all the "mother____" they could go "straight to hell." Tr. 1715. Hutto then indicated he wanted to conduct the cross-examination in the trial. The judge told him he would be allowed to do so. Tr. 1717.

Hutto made a rude physical gesture towards the prosecutor and apparently attempted to accost an officer in the hallway. Tr. 1760.

Hutto informed the officers while he was being interviewed that the victim came onto him in a sexual way. Tr. 1837.

During another witness's testimony, Hutto again was incapable of controlling his impulses. In front of the jury, he yelled "F___ all of ya'll" and then, as the jury was being escorted from the courtroom, he yelled "there's other crimes, murders in Alabama and attempted murders and all that in Alabama." Tr. 2014-15. He told the trial court that "you can kill me today." Tr. 2016. The judge ended court for the day after the outburst. The prosecutor said that the jury was in the room during that outburst. Tr. 2019.

On May 23, 2013, defense counsel renewed its motion to have the trial court find Hutto mentally incompetent. Tr. 2041. Hutto objected to his lawyers raising the issue and indicated that he was seeking the death penalty. He then started lecturing the court on "karma" and told the court that he was not crazy. Tr. 2041-47. He remarked to the trial court: "Have I acted like a pompous ass or a prima donna?" and "Can we kill one bird with two stones?" Tr. 2049. Again, Hutto indicated his belief that he was representing himself at trial- "But I'm representing myself. Remember in Raymond. They're just helping me." Tr. 2051. The judge stood by his initial determination that Hutto was competent. Tr. 2049.

Petitioner also conducted the bizarre cross-examination of his aunt, Lois Rutledge:

> Q: Could you state your name again for the record, ma'am?
>
> A: Yes. Lois Rutledge.
>
> Q: And how do you know the defendant, James Cobb Hutto? Jamie, is that what you said earlier?
>
> A: How do I know you, is that what you said?

Q: How do you know me?

A: You're my niece's son.

Q: How long—how long have you known the defendant?

A: Do you expect—

BY MR. HUTTO: Finish that.

BY MR. KNAPP: Your Honor, please the Court. My name is Mike Knapp. I'm going to help him.

BY MR. HUTTO: I can finish it.

BY MR. HUTTO: (Continuing)

Q: Do you expect any benefits from law enforcement as a result of your testimony, Ms.—

A: Do I expect what?

Q: Do you expect any benefits from law enforcement as a result of your testimony?

A: No, sir, I do not.

Q: Yes, ma'am. Okay.

BY MR. HUTTO: I don't have any further—

BY THE COURT: You may sit down.

Tr. 2111, l. 9- 2122, l. 7.

Hutto then indicated to the court that he did not feel well, and that he felt like he would lash out again if he remained in the courtroom and that he did not want to do that. Tr. 2125-2126. The court informed the jury that Hutto waived his right to

be present but did not further charge the jury that no adverse inferences were to be drawn from that fact. Tr. 2131.

During the playing of one of Hutto's videotaped interrogations, he referred to himself as "Abaddon," a figure from Revelations. He also again referred to himself as Lucifer. Tr. 2188-89.

On May 24, 2013, Hutto again did not want to be present for his capital trial. Tr. 2198- 2219. The court again told the jurors that he waived his right to be present at his trial. Tr. 2222.

The next day, on May 25, 2013, Hutto was back in the courtroom as Michael Ivy, an officer over correctional facilities testified. Hutto again could not control his impulses in the courtroom and yelled, "He's lying and the truth ain't in him. Son of a bitch." Tr. 2325, 2327. His outburst became even more irrational: "Can I get a bail bond? Would you sign me out? The pot runner got cut off, didn't it? Bail bond. For all your bonding needs, Ivy Bail Bonding Services is right across the street." Tr. 2331.

Hutto's irrational behavior continued as he told the trial court judge that he looks like Colonel Reb. Tr. 2343. He yelled, "Went to Lafayette and got Rebels. What did ya'll do to James Meredith up there? Then they're going to name Ross Barnett." Tr. 2343.

The spectacle continued. He made inappropriate remarks to the judge. Tr. 2343-44. With the jury still in the room, Hutto said:

> Going straight to heaven, son of a b___. And if you go to heaven, I can't go to heaven. I know that. You bought your ticket to heaven. Make sure your insurance is paid up because you can't get into heaven without any insurance, Ivy, you son of a b___.

Tr. 2345.

During his lawyer's closing argument, Hutto's uncontrolled and irrational behavior was still on display for the jury to see. Tr. 2376-2377.

During the State's closing argument at the conclusion of the penalty phase, Hutto's irrational behavior continued. Tr. 2613. And then again when the verdict was read. Tr. 2646. In short, throughout his death penalty trial, Hutto's behavior was bizarre and irrational. Despite requests by trial counsel to have his client assessed for competency, the trial court refused concluding, without any medical basis, that Hutto was "competent."

Hutto's ability to cooperate with his lawyers was similarly impaired during his first post-conviction proceeding. There, he declined to meet with his lawyers at all. Counsel was never able to establish any relationship with Hutto which significantly impaired their ability to investigate and develop claims for a collateral challenge to his sentence.

Eventually, during the course of his federal habeas proceeding, Hutto submitted to limited neuropsychological testing on March 29-30, 2023, which revealed a number of cognitive limitations.

For example, Hutto has a terrible memory, scoring in the 10th percentile for recall of a complex geometric figure and at 30-minute, long delay, and he scored in the 1st percentile regarding his visual memory functions. He has a significant disparity between his semantic verbal fluency and his lexical verbal fluency which, is

likely a result of Hutto's impaired executive functioning abilities according to the neuropsychologist.

Very significant deficits also exist in Hutto's executive functioning. While there has not been an assessment of Hutto's competency, it is clear from the record that Hutto has been incapable of assisting his counsel in his own defense. This Court should grant certiorari and hold that the Constitution requires that death-sentenced inmates have the right to competency during their state post-conviction proceedings.

Reasons for Granting the Writ

This Court should hold that death-sentenced inmates have the right to be competent during state post-conviction relief proceedings, an integral part of the death penalty machinery because it offers an opportunity for the kind of factual development necessary to protect a death sentenced defendant's Constitutional right, and society's significant interest in the "heightened reliability" of death punishments. *See, e.g., Ford v. Wainright*, 477 U.S. 339, 417 (1986) ("[T]he lodestar of any effort to devise a procedure must be the overriding dual imperative of providing redress for those with substantial claims and of encouraging accuracy in the factfinding determination."). As Judge Kitchens argues in his *Powers* dissent:

> "The majority's decision will foster the deplorable circumstance of mentally incompetent postconviction petitions journeying through the justice system with no ability to communicate rationally with their lawyers. This Court... rightly rejected such an untenable dilemma. As the Office of Capital Post-Conviction Counsel argues, preserving the right to competency recognizes not only the "moral imperative of upholding human dignity but also the functional concern of protecting against false conviction."

Powers at 722.

James Hutto, because of his persistent incompetence during the entirety of his capital case has lacked the opportunity to have a jury meaningfully consider his culpability with regards to the death of the victim. This Court should grant certiorari and hold that death-sentenced inmates have a right to competence during their post-conviction proceedings as a failsafe guard against wrongful convictions as well as to ensure proportionality between a capital defendant and his sentence. In the capital punishment context, between 10% and 70% of inmates have mental health issues. Dominic Rupprecht, *Compelling Choice: Forcibly Medicating Death Row Inmates to Determine Whether They Wish to Pursue Collateral Relief*, 114 PENN. ST. L. REV. 333, 334 (2009).

This Court has long held that to be deemed mentally competent to stand trial, a criminal defendant must have "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding...and... a rational as well as factual understanding of the proceedings against him." *Dusky v. United States*, 362 U.S. 402 (1960). And see *Drope v. Missouri*, 420 U.S. 162, 172 (1975) ("[T]he failure to observe procedures adequate to protect a defendant's right not to be tried or convicted while incompetent to stand trial deprives him of his due process right to a fair trial" (citing *Pate v. Robinson*, 383 U.S. 375, 385 (1966)). This Court has held that neither federal statutes 18 U.S.C. §§ 3599 nor 4241 confer the right to competency during federal habeas proceedings. *Ryan v. Gonzalez*, 568 U.S. 57 (2013).

Unlike federal habeas proceedings, state post-conviction provides a robust opportunity for counsel to investigate and present additional factual information that

bears directly on the appropriateness of a death sentence. Case law of course, is replete with examples of Constitutionally infirm capital trials where the rights of the defendant were redressed in state court after a post-conviction proceeding. *Wiggins v. Smith*, 539 U.S. 510 (2003); *Wiliams v. Taylor*, 529 U.S. 362 (2000); *Porter v. McCollum*, 558 U.S. 30 (2009); *Andrus v. Texas*, 590 U.S. 806 (2020). There is no question that this stage of litigation is monumentally important to safeguard the rights of capitally sentenced defendants and the interests of society in ensuring that only the most culpable are executed. This Court should grant certiorari and establish a Constitutional right to competency in state post-conviction proceedings for capital defendants.

I. Lower courts disagree regarding the right to competency in state post-conviction cases.

Lower courts disagree about providing a standard of competency for death-sentenced inmates during post-conviction proceedings. The consequence, then, is to interject a level of arbitrariness and capriciousness into the application of the death penalty that provides less protections for capital defendants in states where there is no requirement for state post-conviction proceeding competency. *See McClesky v. Kemp*, 481 U.S. 279 (1987); *Godfrey v. Georgia*, 446 U.S. 420 (1980)

Florida has recognized a limited, due process-based right to a competency determination "when there are reasonable grounds to believe that a capital defendant is incompetent to proceed in postconviction proceedings in which factual matters are at issue, the development or resolution of which require the defendant's input." *Carter v. State*, 706 So. 2d 873, 875 (Fla. 1997). *See Kocaker v. State*, 311 So. 3d 814

(2020). Maine has also recognized a right to post-conviction competency that is rooted in the 6th Amendment. *Haraden v. State*, 32 A.3d 448, 452 (2011) ("Counsel cannot effectively assist his client when the client is unable to meaningfully communicate with counsel"). The Court held that because post-conviction petitioners have a statutory right to counsel, that mandate can only be fulfilled when the petitioner is competent. *Id. See also, Ferguson v. Secretary for Dept. of Corrections*, 580 F.3d 1183 (11th Cir. 2009) (noting that the right to be competent during post-conviction proceedings "appears to stem principally from the right to collateral counsel" pursuant to state statute); *People v. Owens*, 564 N.E.2d 1184, 1189 (Ill. 1990) (requiring a level of competency such that the petitioner can communicate with his post-conviction counsel in a manner contemplated by statute).

Unlike federal habeas proceedings, state post-conviction provides a robust opportunity for counsel to investigate and present additional factual information that bears directly on the appropriateness of a death sentence. Case law of course, is replete with examples of Constitutionally infirm capital trials where the rights of the defendant were redressed in state court after a post-conviction proceeding. *Wiggins v. Smith*, 539 U.S. 510 (2003); *Wiliams v. Taylor*, 529 U.S. 362 (2000); *Porter v. McCollum*, 558 U.S. 30 (2009); *Andrus v. Texas*, 590 U.S. 806 (2020). There is no question but that this stage of litigation is monumentally important to safeguard the rights of capitally sentenced defendants and the interests of society in ensuring that only the most culpable are executed. This Court should grant certiorari and establish a Constitutional right to competency in state post-conviction proceedings for capital

defendants. The lack of uniformity in competency standards interjects a degree of arbitrary and capricious application of the death penalty that is anathema to the constitutional requirements of death penalty jurisprudence. The Court should grant certiorari.

II. This Court's decision in *Ford v. Wainwright* supports the need for a competency inquiry during state post-conviction review.

The Eighth Amendment prohibits the State from executing a prisoner who is insane. *Ford v. Wainwright*, 477 U.S. 399 (1986). This finding derives from the common law's barring of the practice which has been deemed cruel and unusual. *Id.* Even if a person is found competent to stand trial and be sentenced to death previously, the Eighth Amendment bars him from execution based on his present mental state. *Panetti v. Quarterman*, 551 U.S. 930, 934 (2007).

This Court has said that a prisoner must be competent to waive the right to post-conviction counsel or the right to appeal generally. *Rees v. Payton*, 384 U.S. 312, 333, 313-314 (1966) (holding that a defendant's decision to forgo further proceedings requires an evaluation of the defendant's capacity); *see also* Hannah Robertson Miller, A "Meaningless Ritual": How the Lack of a Post-Conviction Competency Standard Deprives the Mentally Ill Effective Habeas Review in Texas, 87 TEX. L. REV. 267, 276 (2008) ("All criminal defendants must be competent to plead guilty, to waive counsel, and to stand trial. In the capital context, defendants must be competent to waive direct appeals, to waive state and federal post-conviction counsel, to withdraw final appeals, and to be executed").

The current "carve-out" for state post-conviction proceedings lacks any logical basis and undermines the foundational requirement that capitally sentenced inmates who lack competency must not be executed. Given the heightened reliability standards that pervade the capital punishment sentencing regime, the lack of uniformity in the country on this point undermines our society and a defendant's interests in the fair and just application of the penalty. *Woodson v. North Carolina*, 428 U.S. 280 (1978); *Lockett v. Ohio*, 438 U.S. 586 (1978). *Ford v. Wainwright* offers additional support for the need to insist on a competency standard during capital post-conviction relief proceedings and this Court should grant certiorari.

Conclusion

This Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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