

IN THE
Supreme Court of the United States

BYRON LEWIS BLACK,

Petitioner,

v.

STATE OF TENNESSEE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE TENNESSEE SUPREME COURT

REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

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INTRODUCTION

The State of Tennessee has responded in opposition to Mr. Black's Petition for a Writ of Certiorari claiming that this Court need not trouble itself with Tennessee's refusal to recognize and apply rights guaranteed by common law. The Petition amply demonstrates that Mr. Black's execution would violate the Eighth Amendment because he qualifies for protection that existed at the Founding for people who suffer from memory loss, low IQ, are unable to manage their affairs, and brain damage. Respondent ignores the extensive common law protection of such persons and the Tennessee Supreme Court "respectfully declined" to entertain his common law claim. App. at 012. Because this Court has repeatedly emphasized that the Constitution must be read in light of the history and traditions at the Founding, Tennessee's failure to provide Mr. Black process must be addressed.

I. THE ASSERTION THAT MR. BLACK'S "IDIOCY" CLAIM IS PROCEDURALLY BARRED IS UNAVAILING AND CONFLICTS WITH ESTABLISHED PRECEDENT

In response to Mr. Black's petition, the State has responded by variously asserting that he should have filed his claim earlier, his claim is an attempt to relitigate his *Atkins* claim, and the lower court's rejection of this claim on procedural grounds precludes this Court's review. Each argument fails.

A. Mr. Black's claim was not ripe until execution was imminent.

The State repeatedly asserts that Mr. Black's competency to be executed claim is procedurally barred because it should have been brought at an earlier time. Brief in Opposition ("BIO") at 2 (asserting that the claim "could—and should—have been raised at [Mr.] Black's trial in 1989, not on the eve of execution 36 years later"); *id.* at 15 (arguing Mr. Black "had 'ample opportunities' to present this idiocy claim 'at an earlier stage.'" (quoting Tennessee Supreme Court Order)); *id.* (arguing Mr. Black

should have raised idiocy claim “at trial, on direct appeal, or in the wake of *Atkins*.”). Respondent does not explain how Mr. Black would have been able to litigate competency issues concerning his mental functioning at the time of his execution 36 years prior to the setting of an execution date. And this argument is obviously contrary to well settled law that a competency claim is not ripe until execution is imminent. *Panetti v. Quarterman*, 551 U.S. 930, 932 (2007); *Stewart v. Martinez-Villareal*, 523 U.S. 637, 643 (1998). Tennessee state law holds the same. *Van Tran v. State*, 6 S.W.3d 257, 267 (Tenn. 1999) (holding that competency to be executed is “ripe for determination only when the motion [to set execution date] is set and an execution date is set”). Therefore, it was only appropriate for Mr. Black to assert a competency claim once his execution was imminent.

B. The State’s attempts to recast Mr. Black’s petition as something other than a competency petition is disingenuous and legally flawed.

In an effort to argue that Mr. Black’s claim was not properly before the Tennessee courts, the State attempts to recast it as something as something it is not. The State claims Mr. “Black’s idiocy claim is an intellectual-disability challenge dressed up in competency garb.” BIO at 12.¹ Not true. “Idiocy” is, and always has been, a question of competency. In fact, the entire development of the legal concept of

¹ The State struggles to grasp that Mr. Black’s low intellectual functioning can serve as the basis of multiple legal claims. Mr. Black filed a motion to recall the mandate with the Tennessee Supreme Court regarding that court’s rejection of Mr. Black’s *Atkins* claim on July 1, 2025. *Black v. State*, M2004-01345-SC-R11-PD (Tenn. July 1, 2025). That action squarely seeks to litigate the merits of Mr. Black’s intellectual disability. Mr. Black does not assert an *Atkins* claim here. There is, moreover, nothing inconsistent with Mr. Black’s assertion that he is intellectually disabled under *Atkins* and that he is incompetent to be executed because he is an “idiot.”

non compos mentis recounted in Mr. Black's papers reflects the early common law origin of much of our present competency jurisprudence in both civil and criminal contexts. "Idiocy's" defining characteristic is low intellectual functioning. And Mr. Black does contend that he meets the definition of "idiocy"—in part—because of his low intellectual functioning as described by the half dozen experts who have diagnosed him as intellectually disabled. Throughout these proceedings, however, Mr. Black has emphasized that "idiocy" differs in material respects from a clinical—or forensic—diagnosis of intellectual disability. Mr. Black has emphasized that the existence of "unsound memory," an inability to manage his own affairs, and the presence of brain "malformations" with wide-spread volumetric loss are characteristics of "idiocy" at common law. It is these characteristics that combine synergistically with Mr. Black's intellectual deficits and constitute "idiocy."

Both present law and the common law recognize that competency determinations must occur at various points in the criminal litigation process. *See, e.g., Godinez v. Moran*, 509 US 389, 396–97, 402 (1983) (reviewing competency standards to stand trial and articulating standard to articulating standard to plead guilty and waive the right to counsel). Lord Hale wrote:

If a man in his sound memory commits a capital offence, and before his arraignment he becomes absolutely mad, he ought not by law to be arraigned . . . And if such person after his plea, and before his trial he becomes of *non sane memory*, he shall not be tried; or, if after his trial he comes of *non sane memory* he shall not receive judgment; or, if after judgment he becomes of *non sane memory*, his execution shall be spared."

Matthew Hale, *The History of Pleas of the Crown* 34 (1847).

Consistent with that tradition, the law recognizes and provides procedures for pre-trial competency determinations, competency deterioration during trial, and for

determinations of an individual's competency to be executed. *Pate v. Robinson*, 383 U.S. 375, 385 (1966) (failure to provide a pre-trial competency hearing "deprived Robinson of his constitutional right to a fair trial"); *Drope v. Missouri*, 420 U.S. 162, 181 (1975) ("Even when a defendant is competent at the commencement of his trial, a trial court must always be alert to circumstances suggesting a change that would render the accused unable to meet the standards of competence to stand trial."); *Ford v. Wainwright*, 477 U.S. 399, 410 (1986) (holding that the Eighth Amendment prohibits the execution of the incompetent shortly before execution). These inquiries reflect distinct constitutional concerns. The State's persistence that Mr. Black should have brought his claim at an earlier time fails to appreciate the distinct constitutional inquiries at play in each of these contexts.

C. The State's assertion that Mr. Black procedurally defaulted his competency claim lacks a basis in law.

Prior to its decision in *Black*, the Tennessee Supreme Court had never addressed the scope of common law rights under its competency jurisprudence. App. at 012; *Black v. State*, No. M2000-00641-SC-DPE-CD, 2025 WL 1927568, at *8 (Tenn. July 8, 2025). But in the seminal case of *Van Tran v. State*, the Tennessee Supreme Court unambiguously said that such rights exist: "Accordingly, we exercise our inherent supervisory authority and hereinafter adopt and set forth the procedure that a prisoner sentenced to death must follow in order to assert his or her *common law* and constitutional right to challenge competency to be executed." 6 S.W.3d at 265 (emphasis added). Mr. Black followed those procedures, timely filing his petition asserting his incompetence under common law. Despite Mr. Black's faithful adherence to the *Van Tran* procedures, the State now contends that he allegedly violated a state procedural rule. BIO at 12–16. The State's unexplained assertion is

that Mr. Black was required by some unidentified Tennessee procedural rule to raise his common law competency right not to be executed at some unidentified previous stage of litigation. To articulate the State's position demonstrates its fatal flaws.

For a state procedural rule to bar review in this Court, it must be a "firmly established and regularly followed state practice." *James v. Kentucky*, 466 U.S. 341, 348 (1984). Prior to *Black*, Tennessee jurisprudence had never held that common law competency claims were limited to claims "grounded in insanity." App. at 011; *Black*, 2025 WL 1927568, at *8. And as described above, there was ample reason to believe that common law competency claims were cognizable under *Van Tran*. As the court in *Van Tran* explained "there currently is no Tennessee statute that contains a procedure for litigating the issue of present competency" and recognized that "[t]he common law recognized that a prisoner sentenced to death had a right to assert a claim of present incompetency." 6 S.W.3d at 260. Only after recognizing the common law rights did the Tennessee Supreme distinguish this Court's decision in *Ford*. *Id.* ("Moreover, in *Ford v. Wainwright*, 477 U.S. 399 (1986), the United States Supreme Court held that the Eighth Amendment to the United States Constitution precludes execution of a prisoner who is incompetent.") (emphasis added). Indeed, the Tennessee Supreme Court cites the "common law" twenty-four times in *Van Tran*, distinguishing common law protections from those already recognized as protected by the Eighth Amendment by this Court. *See, e.g., id.* at 261 (setting "forth the procedure that a prisoner sentenced to death must follow in order to assert his or her common law and constitutional rights to challenge competency to be executed").²

² *See also Van Tran*, 6 S.W.3d at 263 ("Recognizing the common law and constitutional prohibitions and the due process requirements of *Ford*, many states have passed statutes providing procedures for determining a prisoner's competency

Until the Tennessee Supreme Court's decision in *this* case, no statute or caselaw specified any procedural rule prohibiting raising a common law competency right in any proceeding other than proscribed by *Van Tran*. Moreover, the Tennessee Supreme Court did not articulate any rule in *this* case to provide any guidance as to when and where such claims should be raised.

Under these circumstances, an inmate “could not be ‘deemed to have been apprised of [the rule’s] existence.’” *Ford v. Georgia*, 498 U.S. 411, 423 (1991) (quoting *Nat’l Ass’n for Advancement of Colored People v. State of Ala. ex rel. Patterson*, 357 U.S. 449, 457 (1958) (*N.A.A.C.P.*)). “Novelty in procedural requirements cannot be permitted to thwart review in this Court applied for by those who, in justified reliance upon prior decisions, seek vindication in state courts of their federal constitutional rights.” *N.A.A.C.P.*, 357 U.S. at 457–58. Thus, any rule established for the first time in Mr. Black’s case, cannot serve as a procedural bar.

Even if Tennessee had a procedural rule regarding raising common law competency issues other than insanity, such a rule would be insufficient to bar this Court’s review. “This Court will not take up a question of federal law in a case ‘if the decision of [the state] court rests on a state law ground that is independent of the federal question and *adequate* to support the judgment.’” *Cruz v. Arizona*, 598 U.S. 17, 25 (2023) (cleaned up) (emphasis original). “In the context of direct review of a state court judgment, the independent and adequate state ground doctrine is

to be executed.”), 265 (“Accordingly, we exercise our inherent supervisory authority and hereinafter adopt and set forth the procedure that a prisoner sentenced to death must follow in order to assert his or her common law and constitutional right to challenge competency to be executed.”), 273 (setting “the procedure” “that a prisoner sentenced to death must follow in order to assert his or her common law and constitutional rights to challenge competency to be executed”).

jurisdictional.” *Coleman v. Thompson*, 501 U.S. 722, 729 (1991). But “[a] state ground of decision is independent only when it does not depend on a federal holding . . . and also is not intertwined with questions of federal law.” *Glossip v. Oklahoma*, 145 S. Ct. 612, 624 (2025) (internal citation omitted).

Here, any purported application of a state procedural rule is necessarily intertwined with the federal constitutional question presented. Mr. Black asserts that “idiocy” constitutes a form of incompetency recognized by the Eighth Amendment at the time of the Founding. The Tennessee Supreme Court’s unexplained assertion that that this claim is procedurally defaulted wholly depends on its mistaken understanding that this form of incompetency is not encompassed by the Eighth Amendment. If it is—as *Ford* and the common law hold—then “the procedural bar depend[s] on an antecedent ruling on federal law.” *Glossip*, 145 S. Ct. at 626. Accordingly, the purported application of a state procedural rule cannot serve as a bar to review as it inextricably intertwined with the merits of the constitutional issue presented.

II. RESPONDENT ATTEMPTS TO CONCEAL AND AVOID THE TENNESSEE COURTS’ UNAMBIGUOUS AND INCORRECT HOLDINGS BY ASSERTING THAT THE STANDARD SET OUT BY THIS COURT IN *PANETTI* APPLIES EQUALLY TO IDIOTS AS TO LUNATICS.

This Court has never addressed the question raised in Mr. Black’s petition. Despite this unassailable fact, Respondent argues that because Mr. Black passes the competency test set out in *Panetti*, he cannot be incompetent to be executed. BIO at 19–24. However, in *Panetti* itself, this Court was explicit that the test set out therein was not all encompassing: “We do not attempt to set down a rule governing all competency determinations.” *Panetti* 551 U.S. at 960–61. As *Panetti* involved a delusional prisoner and did not address “idiocy” (or its components) or the common

law standards for adjudicating such, its standard necessarily cannot be imputed to Mr. Black's claim—not without a decision so holding from this Court.

Equally, Respondent's argument is incongruous with the judgment below. That is, the Tennessee courts did not determine that *Panetti's* rational understanding test governs Mr. Black's claim. On the contrary, the Tennessee courts simply refused to entertain his claim at all. As the Tennessee Supreme Court held, in Tennessee an incompetency to be executed claim is "limited" to "*Ford*-based claims of incompetency grounded in insanity." App. at 011; *Black*, 2025 WL 1927568, at *8. Respondent attempts to reframe the Tennessee holding to a nothing-to-see-here application of *Panetti*, but that is not what happened below.

The Tennessee courts' preclusion of Mr. Black's claim defies this Court's well-established jurisprudence regarding constitutional interpretation and also ignores its own precedent. *See, e.g., New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 24 (2022) (holding that courts must use an historical understanding of constitutional rights). As explained above, in *Van Tran*, the Tennessee Supreme Court repeatedly invoked the common law. That is, in 1999 when *Van Tran* was decided, the Tennessee Court understood that the determination of competency to be executed flowed from the common law. The Tennessee courts' refusal, now, to engage with Mr. Black's petition reflects its fundamental misunderstanding of the role of history and tradition in the interpretation of common law rights.

III. THE STATE'S ASSERTION THAT MR. BLACK HAS ENGAGED IN GAMESMANSHIP AND DELAY IN SEEKING A STAY OF EXECUTION IS UNSUPPORTED BY THE RECORD.

Mr. Black's case was remanded to the trial court for consideration of his competency claim on March 3, 2025, when the Tennessee Supreme Court set his

execution date. Competency proceedings commenced on May 29, when Mr. Black filed his initial competency petition in compliance with the Tennessee Supreme Court's order that he do so by that date. On June 5, the trial court denied relief. Pursuant to *Van Tran*, the record was forwarded to the Tennessee Supreme Court on June 16. The Tennessee Supreme Court denied relief on July 7. On July 15, Mr. Black filed his petition for certiorari and accompanying application for a stay of execution. This Court received Mr. Black's petition three weeks prior to Mr. Black's execution.

The timing of this case was entirely a function of the schedule created by the Tennessee Supreme Court in *Van Tran*. *Van Tran*, 6 S.W.3d at 266–72 (outlining the procedures applied in Mr. Black's case). The timing of Mr. Black's petition and the ultimate denial by the Tennessee Supreme Court were made on a schedule of that court's choosing. Under these circumstances, Mr. Black cannot be said to have delayed—indeed, he moved with all appropriate dispatch.

CONCLUSION

For the foregoing reasons, this Court should grant this petition for a writ of certiorari.

Dated: July 21, 2025

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kelley J. Henry", is written over a horizontal line.

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