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**IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

STATE OF UTAH,

Plaintiffs,

vs.

RALPH LEROY MENZIES,

Defendant.

**PETITION FOR INQUIRY AS TO
COMPETENCY TO BE EXECUTED
PURSUANT TO § 77-19-203.**

Case No. 031102598

Judge Matthew Bates

Ralph Menzies suffers from dementia. A recent MRI scan shows significant brain atrophy, chronic micro-hemorrhages, and damaged brain tissue, which have resulted in substantial deficits in Mr. Menzies's learning, memory, information processing, abstract reasoning, and problem solving. (Ex. 1). Mr. Menzies was recently evaluated by a neurologist who confirmed a diagnosis of vascular dementia and a neuropsychologist who has determined that, as a result of Mr. Menzies's dementia, his cognitive state is so impaired that he is unable to rationally understand the State's rationale for his execution. (Ex. 2).

On January 17, 2024, the State of Utah filed a motion for the issuance of an execution warrant against Mr. Menzies. *See* Doc. 13. Mr. Menzies’s execution will violate Utah Code § 77-19-205, which prohibits the execution of a prisoner who is incompetent to be executed. Mr. Menzies’s execution will also violate the Eighth Amendment to the United States Constitution, which “prohibit[s] a State from carrying out a sentence of death upon a prisoner who is insane,” *Ford v. Wainwright*, 477 U.S. 399, 409-10 (1986), as well as Article 1, Section 9 of the Utah Constitution, which prohibits cruel and unusual punishment and the infliction of unnecessary rigor.

As set forth below, Mr. Menzies’s dementia-related cognitive decline renders him incapable of forming a rational understanding of the State’s reasons for his execution. *See Madison v. Alabama*, 139 S. Ct. 718, 723 (2019). Because Mr. Menzies presents “good reason to believe” that he is “incompetent to be executed,” the Court must “stay the execution” and order a hearing to determine competency. § 77-19-204. Undersigned counsel certifies that this petition is filed in good faith and on reasonable grounds to believe that Mr. Menzies is incompetent to be executed. § 77-19-203(2). This petition is supported by the accompanying memorandum.

Memorandum of Points and Authorities

A person who is sentenced to death shall not be executed if he is mentally incompetent to be executed. §77-19-205. A prisoner’s attorney may file a petition in the district court requesting the court to order that the prisoner be examined for mental competency to be executed. § 77-19-203. If the district court determines that there exists “good reason to believe an inmate sentenced to death is incompetent to be executed, it

shall stay the execution and order the Department of Human Services to examine the inmate and report to the court concerning the inmate’s mental condition.” § 77-19-204(1). After a hearing, the district court must determine whether the prisoner has proved by a preponderance of the evidence that he is incompetent to be executed. § 77-19-204(9).

I. Mr. Menzies is incompetent to be executed.

In *Ford*, the Supreme Court held that “the Eighth Amendment prohibits a State from carrying out a sentence of death upon a prisoner who is insane.” 477 U.S. at 409-10. In two subsequent decisions—*Panetti v. Quarterman* and *Madison v. Alabama*—the Court drew on the rationales animating *Ford* to elaborate its substantive requirements. In assessing whether a petitioner is incompetent to be executed, the Court explained that “[t]he critical question is whether a ‘prisoner’s mental state is so distorted . . .’ that he lacks a ‘rational understanding’ of ‘the State’s rationale for [his] execution.’ Or similarly put, the issue is whether a prisoner is ‘so impair[ed]’ that he cannot grasp the execution’s ‘meaning and purpose’ or the ‘link between [his] crime and its punishment.’” *Madison*, 139 S. Ct. at 723 (quoting *Panetti v. Quarterman*, 551 U.S. 930, 958–60 (2007)). What constitutes a rational understanding is nuanced and case specific. But “neurologists, psychologists, and other experts can contribute to a court’s understanding” of whether an individual’s unique cognitive situation prohibits their rational understanding of the reasons for their execution. *Id.* at 728.

Although *Ford* and *Panetti* addressed competency questions arising from mental illness, in *Madison* the Court held that the same standard applies to someone suffering from dementia. Like a schizophrenic, a person afflicted with dementia “may be unable to

rationally understand the reasons for his sentence; if so, the Eighth Amendment does not allow his execution.” *Id.* at 727. The Court found that when memory loss attendant to dementia “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.” *Id.* at 727-28. The Court explained that this standard may be satisfied “when a person has difficulty preserving any memories, so that even newly gained knowledge (about, say, the crime and punishment) will be quickly forgotten. Or it may be so when cognitive deficits prevent the acquisition of such knowledge at all, so that memory gaps go forever uncompensated.” *Id.* at 728. The Court noted that the question under *Ford* and *Panetti* is not whether the person has a particular disorder, but “whether a mental disorder has had a particular *effect*: an inability to rationally understand why the State is seeking execution.” *Id.* (emphasis in original). In *Madison*, the Court reasoned that “an execution lacks retributive purpose when a mentally ill prisoner cannot understand the societal judgment underlying his sentence” and determined that such an execution “offends morality.” *Id.* at 728-29.

Mr. Menzies is a 65-year-old man with a diagnosis of vascular dementia by both a neurologist and a neuropsychologist. (Ex. 2). Vascular dementia leads to disruptions in planning, memory, and other thought processes, stemming from brain damage caused by impaired blood flow to the brain. As a result of his vascular dementia, Mr. Menzies is unable to form a rational understanding of the reasons for his execution. Specifically, his awareness of the link between his crime and punishment “has little or no relation to the understanding shared by the community as a whole.” *Panetti*, 551 U.S. at 933.

In 2018 Mr. Menzies began to experience chronic dizziness that led to his first fall from a ladder while working at Utah State Prison. The fall was so severe that it necessitated a hospitalization lasting several days. Over the subsequent years, Mr. Menzies continued to experience unexplained dizziness and falls, which have escalated in frequency. Concurrently, he has grappled with persistent numbness on his left side and a range of other medical issues. Mr. Menzies now uses a walker to navigate the prison and his condition is deteriorating quickly. In the past two years, he has lost over 75 pounds.

While struggling with declining physical health, Mr. Menzies has also experienced a persistent decrease in cognitive functioning. His episodes of confusion, difficulty recalling conversations with others, frequent misplacement of items, and lapses in awareness of his daily schedule on the cell block are all indicative of vascular dementia. Notably, his capacity to retain learned information has become severely compromised, as evidenced by his ability to discuss his case in one moment only to have no memory of the conversation or the information discussed the next day.

In March 2023, prompted by successive falls occurring in close succession, prison doctors deemed it was necessary to conduct an MRI examination to investigate Mr. Menzies's physical and cognitive challenges. The scan, which was conducted in June 2023, showed generalized cerebral volume loss, commonly known as brain atrophy, a condition where the brain tissue diminishes due to an organic brain disease. (Ex. 1). In older populations, the two primary causes of such atrophy are Alzheimer's disease and vascular dementia. In simple terms, Mr. Menzies's brain tissue is shrinking due to the progression of his dementia.

The MRI also highlights chronic microvascular disease. (Ex. 1). This condition involves scarring in the brain resulting from the accumulation of blockages in the small blood vessels deep inside the brain. As these vessels become obstructed, the brain is deprived of oxygen, leading to the formation of dead tissue. This ongoing damage triggers progressive changes in the brain, manifesting as deficits in learning, memory, information processing, abstract reasoning, and problem-solving.

Counsel for Mr. Menzies received the results of the MRI from the Department of Corrections through a public records request. After receiving these results, counsel for Mr. Menzies engaged the services of a neurologist, Dr. Thomas Hyde, and a board-certified neuropsychologist, Dr. Lynette Abrams-Silva, to conduct a thorough assessment of his condition. This evaluation encompassed a comprehensive array of neurological and neuropsychological tests. Dr. Abrams-Silva evaluated Mr. Menzies twice, four months apart, in order to measure any potential decline in his cognitive functioning.

Mr. Menzies's neuropsychological testing reveals severe cognitive deficits with ongoing decline. Specifically, Mr. Menzies experiences significant executive dysfunction, deficits in processing speed and rational analysis, and declining working memory. (Ex. 2 at 9). Compared with prior testing, Mr. Menzies demonstrated a significant decline on tasks involving verbal abstract reasoning and complex problem-solving, both foundational to the cognitive capacity to form a rational understanding. (Ex. 2 at 10). Notably, he experiences confusion and frustration when attempting to engage in problem-solving strategies, displaying an inability to implement correct strategies and a lack of insight into his

limitations. (Ex. 2 at 11). Dr. Abrams-Silva determined that Mr. Menzies's cognitive profile is explained by a diagnosis of vascular dementia.

Dr. Abrams-Silva has also determined that Mr. Menzies is unable to form a rational understanding of the State's reasons for his execution due to the debilitating effects of dementia on his cognitive functioning. Mr. Menzies's executive functioning deficits have significantly hampered his capacity to acquire and retain new information, leading to a notable decline in verbal abstract reasoning and problem-solving abilities. Specifically, Mr. Menzies is

unable to analyze the nuances of information as it pertains to this abstract, future event (i.e., the carrying out of this sentence), or to comprehend the series of complex connections between a current state and a defined outcome (e.g., the connection between the purpose of the sentence and the action of carrying the sentence out). Mr. Menzies demonstrated that he is incapable of appreciating what is outside his own thought process, and often cannot follow even his own thought process sufficiently to translate it into an action. Similar to the disconnect between his stated problem-solving strategy and his actual performance, Mr. Menzies is unable to rationally comprehend the connection between conviction and the reasons underlying a sentence of execution.

(Ex. 2 at 11). Ultimately, Dr. Abrams-Silva concludes that:

[W]hile Mr. Menzies is able to parrot back "correct" answers to basic questions regarding his legal situation and current sentence, . . . he lacks comprehension of abstract concepts (e.g., the rationale for executing someone for a crime); is unable to learn and recall changing details, plans, or strategy (e.g., adapting in the case of a denied clemency, any change in legal proceedings, etc.); is incapable of mentally connecting hypothetical/future outcomes with past details (e.g., appreciating the reasons for an outcome that has not happened yet); or comprehend anything more broad or complex than concrete concepts (e.g., an authority figure made a statement, therefore it cannot be changed). All of these deficits impair Mr. Menzies' ability to form a rational understanding of the reason the State seeks to execute him.

(Ex. 2 at 11). Regarding Mr. Menzies's understanding of the link between the crime for which he was convicted and the execution of the sentence, Dr. Abrams-Silva explains that "cognitive decline due to vascular dementia has broken his mental link between [the societal reasons for the sentence of death] and the application of the punishment, and he himself is unaware of this disconnection." (Ex. 2 at 12). Mr. Menzies's dementia is degenerative, meaning that his condition will never improve. It will only worsen.

Mr. Menzies's memory loss poses a significant barrier to his rational understanding of the reasons for his impending execution. In *Madison*, the Supreme Court recognized that vascular dementia may compromise a prisoner's cognitive functioning such that he is not competent to be executed. This may be so when that prisoner's memory loss is such that he "has difficulty preserving any memories, so that "even newly gained knowledge (about, say, the crime and punishment) will be quickly forgotten." *Madison*, 139 S. Ct. at 727-28. That is exactly the case with Mr. Menzies. Mr. Menzies's dementia severely impairs his short-term memory. He can engage in a conversation with his legal team one day and have no recollection of it the next day. When asked to recall recently acquired information, Mr. Menzies becomes notably confused, a critical issue in the context of pre-execution proceedings.

To illustrate the impact of Mr. Menzies's major neurocognitive disorder resulting from vascular dementia on his competency for execution, consider a hypothetical scenario where he applies for clemency but is subsequently denied. While the justification for the denial would be explained to him by the clemency board or his legal team, his cognitive deficits would impair his ability to connect basic facts to abstract concepts, preventing him

from understanding the reasons for the denial and the resulting future outcome of his execution. Further, as Mr. Menzies approaches his execution days or weeks later, he is likely to have no recollection of why his clemency application was denied, or even that he applied for clemency at all. In the absence of the memory of the justification for the denial of his clemency petition, Mr. Menzies would be rendered incapable of understanding why society is unwilling to show him mercy, and therefore would not be able to understand why society is punishing him. Thus, the inability to retain new information about his case prevents Mr. Menzies from forming a rational understanding of “the objective of community vindication” or fully grasping the execution’s “meaning and purpose” or “the link between his crime and punishment[.]” *Panetti*, 551 U.S. at 958-59, 960; *see also Madison*, 139 S. Ct. at 723, 727 (“Echoing *Ford*, *Panetti* reasoned that execution has no retributive value when a prisoner cannot appreciate the meaning of a community’s judgment.”).

II. Utah’s definition of incompetency to be executed is unconstitutional.

The foregoing demonstrates Mr. Menzies is incompetent to be executed under the federal standard elaborated in *Panetti* and *Madison*. To the extent Mr. Menzies does not also satisfy Utah’s standard of incompetency for execution, the state definition must give way to the federal one.

Utah Code § 77-19-201 states that “‘incompetent to be executed’ means that, due to [a] mental condition, an inmate is unaware of either the punishment he is about to suffer or why he is to suffer it.” This definition conflicts with the federal constitutional standard because it unconstitutionally narrows review to a prisoner’s awareness of the crime for which he is to be punished and of the impending punishment of death. Indeed, Utah’s

standard is almost identical to the standard rejected in *Panetti*. The Fifth Circuit in that case held that a petitioner was competent to be executed because “[f]irst, petitioner is aware that he committed the murders; second, he is aware that he will be executed; and, third, he is aware that the reason the State has given for the execution is his commission of the crimes in question.” *Panetti*, 551 U.S. at 956. The Supreme Court overturned that decision, and it repudiated the awareness standard, holding that a competency standard that only examines “whether a prisoner is aware ‘that he [is] going to be executed and why he [is] going to be executed’” is “too restrictive to afford a prisoner the protections granted by the Eighth Amendment.” *Id.* at 956-57 (alterations in *Panetti*).

Utah’s definition ignores the latter.¹ For this reason, it would be unconstitutional for the Court to apply the definition set forth in § 77-19-201 to Mr. Menzies’s claim. Rather, it must analyze Mr. Menzies’s incompetency claim under the “rational understanding” standard announced in *Panetti*.² Applying the proper standard, the Court must conclude that Menzies is not competent to be executed.

¹ This inconsistency can be attributed to the fact that § 77-19-201 was last updated in 2005, two years before the Supreme Court clarified the definition of incompetency for the purposes of execution in *Panetti*, 551 U.S. at 958.

² To the extent that the Court feels constrained by the statutory definition, it may exercise its original constitutional jurisdiction over the extraordinary writ to assess Mr. Menzies’s competency to be executed under the constitutional standard. *See Patterson v. State*, 2021 UT 52, ¶ 149, 504 P.3d 92 (Sup.Ct.) (Holding that “the Legislature may not substantively regulate the judicial branch’s power to issue writs” and that the courts may review the merits of a claim that is otherwise constrained by statute “when failure to do so would violate a petitioner’s constitutional rights.”)

III. Conclusion

Mr. Menzies has filed a timely motion which presents good reason for the Court to believe that he is incompetent to be executed. The Court should order the Department of Health and Human Services to examine Mr. Menzies and order a competency hearing.

DATED January 23, 2024.

JON M. SANDS
Federal Public Defender

/s/ Eric Zuckerman
Assistant Federal Public Defender

CERTIFICATE OF SERVICE

I hereby certify that on January 23, 2024, I electronically filed the foregoing PETITION FOR INQUIRY AS TO COMPETENCY TO BE EXECUTED PURSUANT TO § 77-19-203 with the Clerk of the Court by using the Utah Court's ECF electronic filing system and all registered ECF participants registered with the ECF system.

/s/ Daniel Juarez
Assistant Paralegal