SUCCESSFUL *FORD* CLAIMS (INCLUDING REMANDS)
Updated March 1, 2009

I. UNITED STATES SUPREME COURT

***Panetti v. Quarterman*,**
551 S.Ct. 930 (2007)

No deference is due state court's decision where "state court failed to provide petitioner with the minimum process required by *Ford*." Evidence presented showed petitioner, who represented himself at trial, suffered from delusions and hallucinations, was repeatedly hospitalized for these disorders, prescribed large doses of medication that a person not suffering extreme psychosis could not tolerate, engaged in "bizarre," "scary" and "trance-like behavior" during trial, and had stopped taking his medications. Because it was "uncontested that petitioner made a substantial showing of incompetency," he was entitled " to, among other things, an adequate means by which to submit expert psychiatric evidence in response" to evidence the court solicited. It is also "clear ... the state court reached its competency determination after failing to provide petitioner with this process, notwithstanding counsel's sustained effort, diligence, and compliance with court orders." The state court refused to transcribe proceedings despite Petitioner's request that it do so, repeatedly provided information to Petitioner's counsel that turned out to be untrue, failed to provide Petitioner notice of "a significant update," failed "to keep petitioner informed as to the opportunity, if any, he would have to present his case," implied that its competency determination was based "solely" on "examinations performed by the psychiatrists it had appointed," and failed to provide Petitioner "an adequate opportunity to submit expert evidence in response to the report" the court-appointed experts filed. These "procedural deficiencies" violated Petitioner's federal rights. Due "to the state court's unreasonable application of *Ford*, the factfinding procedures upon which the state court relied" were inadequate to reach "reasonably correct results," and "resulted in a process" "`seriously inadequate for the ascertainment of the truth.'" The Fifth Circuit erred, too, when it applied a "too restrictive standard" that foreclosed petitioner from establishing incompetency by showing "his mental illness obstructs a rational understanding" of the reason for his execution. The circuit standard "treats a prisoner's delusional belief system as irrelevant" if the prisoner knows the State "has identified his crimes as the reason for his execution." *Ford* never indicated delusions are irrelevant to comprehension or awareness if they impair a prisoner's concept of reality "such that he cannot reach a rational understanding of the reason for the execution. If anything, the *Ford* majority suggests the opposite." The petitioner'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 later." Holding that Petitioner's evidence 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 ...should have been considered," the Court remanded to the district

court to allow development of the record on these issues and resolution of the claim.

Note: On March 26, 2008, the district court ruled that Panetti is competent to be executed. *Panetti v. Quarterman*, 2008 WL 2338498 (W.D. Tex. March 26, 2008). As of March 9, 2009, Panetti's appeal is pending in the Fifth Circuit. The appeal has been stayed, however, while Panetti returns to state court to raise a claim based on *Indiana v . Edwards*, 128 S .Ct . 2379 (2008).

II. U.S. COURTS OF APPEALS

***Jones v. United States*,**
327 F.2d 867 (D.C.Cir. 1963)

Trial court erred in failing to hold hearing on competency to be executed, where defendant had previously been ordered committed and refused to cooperate with experts appointed to assess his competency, and where there was extensive evidence as to his mental disorder.

III. U.S. DISTRICT COURTS

Wood v. Quarterman,
572 F.Supp.2d 814 (W.D. Tex. 2008)

Motion to stay execution granted, counsel appointed to represent habeas petitioner and funds granted to retain services of mental health expert to evaluation petitioner who was scheduled to be executed in less than twenty days. Evidence supporting incompetency included: (1) petitioner's prior incompetence to stand trial (despite petitioner being found competent few months later "despite receiving no medical treatment or medication during" that time), (2) prior evaluation finding petitioner suffered "delusional thought patterns" interfering with his ability to "communicate effectively" with counsel, (3) prior evaluation finding petitioner's "ability to appreciate" consequences of options or behave in self-protective fashion profoundly impaired and almost delusional, (4) prison staff "noted instances of paranoid comments," (5) petitioner treated for suicidal ideation and multiple suicide attempts during incarceration, and made many "patently delusional comments" to federal habeas counsel suggesting "completely unrealistic view" where petitioner might someday obtain relief from sentence. Although these facts do not alone satisfy incompetency to be executed standard, under *Panetti*, a capital petitioner is guaranteed "certain minimal due process protections" when he makes "a substantial showing of insanity." Here petitioner denied counsel and expert assistance to challenge competency to be executed, and "by definition" a system requiring an insane person to make `a substantial showing' that he lacks mental capacity without" "counsel or a mental health expert" aiding him "is, by definition an insane system." Also, state standard for

incompetency to be executed–that defendant is to be executed imminently and the reason for his execution--"unconstitutionally narrow." *Panetti* "makes clear" standard focusing "exclusively" on defendant's awareness of situation but "ignores" possibility defendant suffering from "delusional thought processes" interfering "with his ability to rationally comprehend causal link" between offense and imminent execution is unconstitutional.

***Walton v. Johnson*,**
269 F.Supp.2d 692 (W.D.Va. 2003)

Sufficient conflicting evidence existed to warrant an evidentiary hearing on whether petitioner was competent to be executed. Petitioner presented affidavits from experts that he suffers from psychotic illness preventing him from understanding that he has been found guilty of murder and the nature of the punishment he will suffer. The state countered with expert evidence that petitioner clearly understands his upcoming execution. Noting that Virginia does not have a statutory definition of incompetency, the court applied the standard announced in Justice Powell's concurrence in *Ford*: whether petitioner is aware of the punishment and the reason for the punishment.

Note: The claim was ultimately denied by the district court. See 306 F.Supp.2d 597, and 318 F.Supp.2d 345.

***Amaya-Ruiz v. Stewart*,**
136 F.Supp.2d 1014 (D.Ariz. 2001)

Petitioner filed a second federal habeas petition raising a *Ford* claim. Petitioner had previously been found incompetent to be executed in state court. About a year later, the chief medical officer at the state hospital reported Petitioner was competent to be executed. Under the state statute governing recovery of competency, the state courts issued a warrant of execution, dismissing Petitioner's requests for discovery, appointment of experts and an evidentiary hearing, as well as his argument that application of the recovery statute violated due process. The state filed a motion for a hearing on Petitioner's competency. Petitioner opposed the motion, and the state court denied it. Petitioner filed a federal habeas.

The federal district court first determined that under *Stewart v. Martinez-Villareal*, 523 U.S. 637 (1998), the habeas petition was not a "second or successive" petition. The court declined to determine whether other AEDPA provisions governed, because the court found that even under the AEDPA, Petitioner was entitled to an evidentiary hearing.

The district court found that the state statute governing restoration of competency did not satisfy due process, relying upon Justice Powell's concurring opinion in *Ford*. After conviction and sentence, a defendant is presumed competent. However, once Petitioner had made the threshold showing of incompetency and overcome the presumption of

competency, he had a heightened interest in avoiding an erroneous determination of his competency and therefore the demands of due process increased.

The Arizona recovery statute leaves the decision as to whether competency has been restored solely to the chief medical officer of the state hospital. If that officer certifies competency, the statute divests the state courts of jurisdiction and requires issuance of an execution warrant. The statute provides the prisoner no method of challenging the medical officer's decision. Another statutory provision providing procedures for a successive competency determination does not cure the defects in the recovery statute. Nor is due process satisfied because Petitioner was able to file in opposition to the state's request for a warrant. When, as here, the prisoner has established incompetency, due process requires, at a minimum, an opportunity to be heard and present evidence. The prisoner is entitled at least to the due process required for an initial determination of competency.

After finding that the state procedure violated due process, the district court granted an evidentiary hearing. Petitioner was denied an evidentiary hearing in state court and therefore did not "fail to develop" the factual basis of his claim under the AEDPA. Petitioner's allegations, if true, would entitle him to relief.

Note: Amaya-Ruiz's death sentence was ultimately vacated upon a finding that he is mentally retarded.

***Jermyn v. Horn*,**
1998 WL 754567 (M.D.Pa., Oct. 27, 1998), *aff'd on other grounds*, 266 F.3d 257 (3rd Cir. 2001)

Petitioner was entitled to an evidentiary hearing on his allegations that the state violated his due process rights when, during a recess of a hearing to determine his competency to be executed under *Ford*, a lawyer for the governor's chief counsel's office threatened the petitioner's psychiatrist with termination of her employment at a state hospital if she examined petitioner and testified on the basis of that examination.

_____
_____***Paz v. Arave*,**
CIV-93-0132-S (D. Idaho Oct. 3, 1996)

Ruling Paz incompetent to be executed after finding that he suffers from chronic and major mental illness as a result of which he does not know why he is to be executed. (Although Paz knew why the State asserted Paz was to be executed, Paz believed that the victim was actually still alive and that Paz's incarceration and death sentence were part of a conspiracy to harass and humiliate him.) Further ruling that the sentence of death must be vacated because Paz's mental condition will not improve in the foreseeable future.

***Martin v. Dugger*,**
686 F.Supp. 1523 (S.D.Fla. 1988)

Court would not give presumption of correctness to state-court finding of competence, where defense counsel was not given notice that evidence would be taken at a hearing and where the trial court discredited the opinions of defense experts based solely on their written submissions. An evidentiary hearing in federal court is merited, and the court will apply the test of whether Martin appreciates the connection between his crime and the punishment. (For prior history, see *Martin v.*State, 515 So.2d 189 (Fla. 1987), in which the Florida Supreme Court approved the hearing found wanting here. See also *Martin v. Dugger*, 515 So.2d 185 (Fla. 1987), in which the Florida Supreme Court declined to attribute to petitioner his attorney's waiver of a competency evaluation.)

Note: Martin did not appeal the district court's ultimate resolution of the *Ford* claim and it was deemed abandoned. See 891 F.2d 807 (11th Cir. 1989).

IV. STATE COURTS

***Reid ex rel. Martiniano v. State*,**
2007 WL 1946652 (Tenn.Crim.App. 2007)(unreported)

After determining postconviction petitioner's "next friend" satisfied criteria to proceed on defendant's behalf, trial judge concluded next friend not "satisfy the threshold showing of incompetence to pursue postconviction relief to warrant" full hearing. On appeal, court concludes statements contained in affidavits from petitioner's former and present counsel, investigator, and a neuropsychiatrist "demonstrate his alleged incompetency to a sufficient degree to require an evidentiary hearing." Purpose of "prima facie showing" "not to prove" defendant's incompetence, but "is merely a threshold hurdle requiring" next friend file petition "alleging more than bare and unsupported allegations of incompetency."

***Timberlake v. State*,**
859 N.E.2d 1209 (Ind. 2007)

Allegations that petitioner was severely mentally ill, insane and incompetent to be executed supported state court's request for evaluation by independent psychiatrist. Psychiatrist reported that petitioner suffered "active and severe form of serious mental illness," believed a machine, at behest of prison officials, spoke to and tortured him, has no insight into his illness, and is not malingering, but he did understand he is to be executed and why. A stay of execution is found to be appropriate given that petitioner's "situation is sufficiently similar to" to the then-recent certiorari grant in *Panetti v. Quarterman*, 127 S.Ct. 852 (2007). This was true despite the fact that shortly after

certiorari was granted in *Panetti,* a federal district court denied petitioner relief under *Ford*, finding the lower state court's application was not objectively unreasonable and its determination of the facts were entitled to deference. The district court had further observed that even if *Panetti* "succeeds in causing a change to the *Ford* criteria," AEDPA would not permit the court to apply new law to that change." Here, however, the state court "is not subject to AEPDA" and is "free to revisit [its] own decisions." Because there is "the possibility, which is not remote, that the Supreme Court" will decide the case "in a way that may have an affect on" petitioner, a stay of execution is appropriate.

***Provenzano v. Florida*,**
751 So.2d 37 (Fla. 1999)

When defendant and state submit pleadings containing conflicting psychiatric reports on competency to be executed material questions of fact arise which must be resolved in "the crucible of an adversarial proceeding"

***Medina v. State*,**
690 So.2d 1241 (Fla. 1997)

Even though three state experts testified that Medina was competent to be executed, the written reports of two psychologists and a psychiatrist submitted by defense counsel should have given the lower court "reasonable ground" to grant a stay of execution and convene the competency hearing called for by state law. Florida's statutory scheme is not constitutionally wanting even though an indefinite stay of execution is not authorized unless the inmate can prove his incompetence by clear and convincing evidence. Although the U.S. Supreme Court ruled, in *Cooper v. Oklahoma*, 116 S.Ct. 1373 (1996), that a defendant could not be required to prove his competence to stand trial by any standard more burdensome than a preponderance of the evidence, the substantial interest of the state in carrying out death sentences justifies striking a different balance between the state and the individual.

***Van Tran v. Tennessee*,**
6 S.W. 3d 257 (Tenn. 1999); *see also Coe v. Tennessee*, 17 S.W. 3d 193 (Tenn. 2000)(affirming denial of relief under *Van Tran* procedure)

Competency to be executed is a ripe issue only when defendant has pursued all federal and state post-conviction relief; court establishes procedure for raising *Ford* claims, including necessity for prima facie showing, provision for experts and a hearing, and procedure for appeal

***Singleton v. State*,**
437 S.E.2d 53 (S.C. 1993)

Under South Carolina law, defendant may not be executed unless he (1) understands the nature of the proceedings, what he was tried for, the reason for the punishment and the nature of the punishment and (2) possesses sufficient capacity to rationally communicate with counsel. Trial court properly found Singleton incompetent, since he is unaware that he is capable of dying in the electric chair and can give only yes-no responses to his counsel's questions. Trial court erred, however, in vacating Singleton's death sentence. The state can carry out the sentence of death if it can prove that Singleton has been restored to competency; the state may not force medication on Singleton, however, as that would violate his right to privacy under the state constitution.

***State ex rel. Eaton v. Butler*,**
547 So.2d 364 (La. 1989) (Mem.).
A memorandum opinion ordering a hearing on defendant's competency to be executed; no details on the evidence of his mental state are given.

***Ex parte Jordan*,**
758 S.W.2d 250 (Tex.Crim.App. 1988)

The court upholds the trial court's use of a narrow test for competency to be executed: whether defendant was capable of comprehending the nature, pendency and purpose of his execution. The testimony of three experts and of Jordan himself indicated that he lacked such a capability.

***Billiot v. State*,**
515 So.2d 1234 (Miss. 1987).

Petitioner's request for protection from execution, which was supported by affidavits of three mental health experts who deemed him insane, was sufficient to entitle him to an in-court opportunity to prove his insanity

***Martin v. Dugger*,**
515 So.2d 185 (Fla. 1987).

Petitioner's post-conviction counsel waived the claim of incompetence when he directed petitioner not to cooperate with a state evaluation procedure that counsel mistakenly believed was in violation of *Ford v. Wainwright*. Nevertheless, to avoid any possible prejudice, the court declines to attribute counsel's waiver to petitioner and requests that the governor reconvene a panel of psychiatrists.

***Garrison v. People*,**
378 P.2d 401 (Colo. 1963).

In conducting jury trial on defendant's competency to be executed, the trial court erred in

excluding all evidence regarding defendant's mental state that dated from before his conviction and sentence of death.