

**Summary of SC94841, *State ex rel. Cecil Clayton v. Cindy Griffith, in her capacity as Warden, Potosi Correctional Center***

Original proceeding in habeas corpus

Submitted on the Court filings March 14, 2015; opinion issued March 14, 2015

**Attorneys:** Clayton was represented by Jeannie Willibey of the public defender's office in Kansas City, (816) 889-7699; Pete Carter of the public defender's office in Columbia, (573) 777-9977; Elizabeth Unger Carlyle, an attorney in Kansas City, (816) 525-6540; and Susan M. Hunt, another attorney in Kansas City, (816) 221-4588. The state was represented by Michael J. Spillane, Caroline M. Coulter and Gregory Michael Goodwin of the attorney general's office in Jefferson City, (573) 751-3321.

*This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** A man scheduled to be executed March 17 for the 1996 shooting death of a law enforcement officer alleges he legally is incompetent to be executed. In a 4-3 decision written by Judge Paul C. Wilson, the Supreme Court of Missouri denies relief. The man is competent to be executed. Considering all the evidence presented, he has failed to make the threshold showing to justify staying his execution so his competence can be determined after an evidentiary hearing or that he is incapable of understanding arguments for extenuation or clemency as required by state law. Because a state statute does not permit the director of corrections to determine whether a prisoner is competent to be executed to the exclusion of or as a predicate to an inmate's ability to seek judicial determination of that issue, the statute is not unconstitutional. Further, the man is not intellectually disabled such that he cannot be executed.

Judge Laura Denvir Stith dissents. She would hold that the man is entitled to a hearing on his claim of intellectual disability precluding his execution. She also would hold that the man is entitled to a hearing regarding his competence to be executed because he has presented reasonable grounds to believe that he does not now adequately understand the circumstances surrounding his execution.

**Facts:** Cecil Clayton was convicted for the 1996 shooting death of a law enforcement officer and was sentenced to death. This Court affirmed his conviction and sentence as well as the subsequent denial of his motion for post-conviction relief. Clayton then filed a petition for a writ of habeas corpus in the federal courts, which denied the relief. This Court ordered that Clayton be executed March 17, 2015. On March 10, Clayton petitioned this Court for relief. He alleges that a traumatic brain injury he sustained in 1972 rendered him legally intellectually disabled and that a lack of treatment for this injury has rendered him more so disabled over time. As such, Clayton argues, he is not competent to be executed under the standards articulated by United States Supreme Court in its 1986 decision in *Ford v. Wainwright* and its 2007 decision in *Panetti v. Quarterman* and by the state legislature in section 552.060, RSMo.

**PETITION DENIED.**

**Court en banc holds:** (1) Clayton is competent to be executed. Considering all the evidence presented, Clayton has failed to make the threshold showing required by *Ford* and *Panetti* to justify staying his execution so his competence can be determined after an evidentiary hearing or that he is incapable of understanding arguments for extenuation or clemency as required by section 552.060. The Eighth Amendment to the United States Constitution prohibits a state from executing a person who is insane, and *Ford* and *Panetti* set the standard for how this constitutional prohibition is applied. Under *Ford*, a prisoner must make a sufficient threshold showing that his current mental state bars execution before he is entitled to an adjudication to determine a claim of incompetence on the eve of his execution. The evidence Clayton offers, however, shows nothing more than a man who suffers from some cognitive impairment but who understands he has been found guilty of killing the sheriff's deputy and has been sentenced to death for that act. Neither the fact that Clayton believes he should not have been convicted nor the fact that he believes he will be spared from execution is sufficient to make a threshold showing that he is incompetent to be executed. Despite reaching conclusions that Clayton was not competent for proceeding in federal court or to be executed, the experts on whom Clayton relies admit that Clayton understands that his death sentence was imposed as punishment for killing the deputy and that it will be carried out if not stayed, vacated or commuted. As such, it was rejected by the federal courts, and this Court also rejects these reports as conclusory (stating conclusions without supporting facts) or internally inconsistent or contradictory. Other evidence shows that Clayton recently has made telephone calls to relatives in which he explains that, unless his execution is stopped, he will be executed for murdering the sheriff's deputy. In addition, a forensic psychiatrist who evaluated Clayton last fall concluded that, while Clayton has mental disorders resulting from his brain injury and believes that God may (but may not) intervene to stop his execution, Clayton nonetheless is competent to be executed. Clayton also is competent to be executed under section 552.060. This Court previously has found that there was no basis to believe Clayton was not competent to assist counsel appropriately before and during his original trial, and the federal courts found he was competent to assist counsel in those proceedings. Clayton provides no evidence his capabilities have declined materially since then and that, as a result of his decline, his counsel have been unable to prepare a clemency application on his behalf.

(2) Section 552.060.2, RSMo is not unconstitutional. This subsection provides that, if the director of the department of corrections has reasonable cause to believe an inmate sentenced to death is not competent to be executed, the director immediately must notify the governor, who must stay the execution if there is not sufficient time to determine the person's mental condition. By its plain language, this statute pertains only to what the director and governor "shall" do under certain circumstances. It does not establish, define or enforce any right of a condemned inmate. The statute is irrelevant when an inmate raises in this Court a claim that he is not competent to be executed. Because section 552.060.2 does not permit the director to determine whether a prisoner is competent to be executed to the exclusion of or as a predicate to an inmate's ability to seek judicial determination of that issue, it is not unconstitutional.

(3) Clayton is not intellectually disabled such that he cannot be executed under the United States Supreme Court's 2002 decision in *Atkins v. Virginia*. Clayton already has litigated this claim – unsuccessfully – in the federal district court. Assuming this Court is not bound by the federal court's decision, this Court rejects Clayton's claim on the merits. Although *Atkins* holds that the

federal constitution prohibits execution of an intellectually disabled person, it recognizes that the question of what constitutes “intellectual disability” is a question of state law. Under Missouri’s definition of intellectual disability in section 565.030, RSMo, a person must have conditions that are manifested and documented before a person is 18 years old. The evidence shows Clayton was of average intelligence or better at age 18 and at least until his 1972 brain injury; as such, he cannot be “intellectually disabled” under Missouri law. Clayton offers no authority to expand *Atkins* to allow this Court to consider whether the continuing effects of his brain injury exempt him from execution because they are “as if” he was intellectually disabled under *Atkins*. Further, his IQ score after his brain injury places him above the generally recognized cutoff for intellectual disability of 70, and Clayton makes no claim that there was a margin of error in his IQ tests. Further, one of his experts who administered a competency examination reported that Clayton’s scores were consistent with presumed competent individuals without mental retardation.

**Dissenting opinion by Judge Stith:** (1) The author would hold that Clayton is entitled to a hearing on his claim of intellectual disability precluding his execution. In its 2002 decision in *Atkins v. Virginia*, the United States Supreme Court held that no legitimate penological interest is served by executing an intellectually disabled person. In reviewing a statute similar to Missouri’s in 2014, the Supreme Court held in *Hall v. Florida* that IQ scoring is imprecise and should be considered as a range reflecting the standard error of measurement and that a court also must consider other factors regarding the individual’s adaptive functioning. The issue is not whether Clayton was sufficiently competent to assist in his defense or to be found guilty when he was convicted or during subsequent federal proceedings. Rather, the issue is whether Clayton is sufficiently competent *today* to be executed. Further, Clayton’s principal claim is not whether he is entitled to be executed under section 565.030.6 because of an intellectual disability prior to age 18. Rather, he claims he is entitled to relief under the Eighth Amendment as interpreted and applied in *Atkins* and *Hall* because he has developed an intellectual disability and is entitled to seek relief from execution.

(2) The author additionally would hold that, under the United States Supreme Court’s decisions in *Ford* and *Panetti*, as well as under section 552.060.1, Clayton also must understand the rationale for his execution, not just the nature of and purpose for the execution. The only issue for this Court is whether Clayton has presented reasonable grounds that, if believed, demonstrate he lacks the competency to be executed. If so, then this Court must allow a hearing at which a factual determination can be made. The record before this Court, including the findings and opinions of the expert mental examiners, presents reasonable grounds to believe that Clayton can meet the standard under *Panetti* or section 552.060.1, entitling him to a hearing. Denying Clayton of such a hearing deprives of a fair opportunity to show that the federal constitution prohibits his execution.