

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 16-12279-P

VERNON MADISON,

Petitioner – Appellant,

versus

COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS,

Respondent – Appellee.

Appeal from the United States District Court
for the Southern District of Alabama

Before WILSON, MARTIN and JORDAN, Circuit Judges.

BY THE COURT:

Petitioner Vernon Madison is an Alabama prisoner scheduled to be executed on May 12, 2016. He has filed a 28 U.S.C. § 2254 petition contending that he is mentally incompetent to be executed under Ford v. Wainwright, 477 U.S. 399, 106 S. Ct. 2595 (1986), and Panetti v. Quarterman, 551 U.S. 930, 127 S. Ct. 2842 (2007). The district court found that Madison properly filed his Ford claim in federal court but denied the claim on the merits. The district court found that Madison had exhausted his Ford claim in state court as required by 28 U.S.C. §

2254(b)(1). It also noted that Madison's Ford claim was not barred as "second or successive" under 28 U.S.C. § 2244(b).

Madison moves for a certificate of appealability ("COA") so that he may appeal the denial of his § 2254 petition. He also seeks a stay of his execution pending appeal.

This Court may issue a COA from the denial of a § 2254 petition "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). This requires a demonstration that "jurists of reason could disagree with the district court's resolution of his constitutional claim or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." Miller-El v. Cockrell, 537 U.S. 322, 327, 123 S. Ct. 1029, 1034 (2003).

The Supreme Court has held that "the Eighth Amendment prohibits a State from carrying out a sentence of death upon a prisoner who is insane." Ford, 477 U.S. at 409–10, 106 S. Ct. at 2602. Then in Panetti the Court clarified that the prisoner must have "a rational understanding of the reason for the execution." 551 U.S. at 958, 127 S. Ct. at 2861. Madison alleges that as result of a series of strokes and other serious medical conditions, he suffers from vascular dementia, which has resulted in significant memory impairment, a decline in cognitive functioning, and ultimately an inability to rationally understand why the State of Alabama is

seeking to execute him. An Alabama trial court denied this claim. Madison did not appeal this decision because, as the Alabama trial court and the district court found, Alabama state law insulates the trial court's competency decision from review by any other Alabama court. See Ala. Code §15-16-23. Madison argues that the state court's decision that he is competent to be executed was contrary to or involved an unreasonable application of Panetti and Ford. Madison also argues that the state court's decision was based on an unreasonable determination of the facts because it failed to consider evidence of his dementia and related impairments.

The Supreme Court has observed that a Ford claim is unique from other constitutional claims that arise in capital cases because it becomes ripe for adjudication only when the petitioner's execution is imminent. See Stewart v. Martinez-Villareal, 523 U.S. 637, 644–45, 118 S. Ct. 1618, 1622 (1998); see also Panetti, 551 U.S. at 947, 127 S. Ct. at 2855 (“[C]laims of incompetency to be executed remain unripe at early stages of the proceedings.”). This is therefore the first time that any state or federal court has had the opportunity to consider Madison's claim that his execution is prohibited by the Eighth Amendment. This claim could not have been raised before Madison's execution became imminent, and only the Alabama trial court and the district court have reviewed Madison's claim.

Pursuant to Miller-El, Madison has satisfied § 2253(c)(2)'s standard.

Madison's motion for COA is **GRANTED** as to the following issues:

(1) Whether the state court's decision that Madison is competent to be executed is contrary to or involves an unreasonable application of clearly established federal law.

(2) Whether the state court's decision that Madison is competent to be executed was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding.

“If a certificate of appealability is granted by the district court or by this court, the panel may grant a temporary stay pending consideration of the merits of the appeal if necessary to prevent mootness of the appeal.” 11th Cir. R. 22-4(a)(7); see also Ferguson v. Sec'y, Fla. Dep't of Corr., 716 F.3d 1315, 1330, 1344 (11th Cir. 2013) (granting temporary stay of execution under Rule 22-4(a)(7), denying state's motion to vacate the stay, and ultimately affirming the district court's denial of habeas relief after hearing oral argument on the merits of prisoner's Ford claim). Madison's death will render his appeal moot. The Court therefore **GRANTS** Madison's Motion for Stay of Execution.

The Court directs the parties to brief the merits of the issues identified in the COA, pursuant to the following schedule: Petitioner shall file a brief on the merits by May 27, 2016. Respondent shall have until June 10, 2016, to file a response brief. Petitioner shall then have until June 17, 2016, to file a reply brief. The parties are directed to file the briefs electronically and to serve the briefs to

opposing counsel electronically at the same time. Oral argument shall take place in Atlanta on June 23, 2016, at 9:00 a.m. EST. Counsel shall be given 30 minutes per side.

IT IS SO ORDERED.