THE YALE LAW JOURNAL FORUM
July 21, 2014

Hall v. Florida and Ending the Death Penalty for Severely Mentally Ill Defendants

Lise E. Rahdert

This Term in *Hall v. Florida* the Supreme Court held a portion of Florida's death penalty statute unconstitutional under the Eighth and Fourteenth Amendments.[1] Specifically, the Court invalidated Florida's rigid system for determining whether a capital defendant is intellectually disabled and therefore categorically ineligible for the death penalty.[2] Before *Hall* was decided, if a Florida capital defendant had an IQ of above 70 points, then his attorneys were prohibited from presenting any evidence of his intellectual disability.[3] This created a system in which someone who, like Mr. Hall himself, had an IQ score of 71 but nevertheless exhibited myriad other signs of intellectual disability was automatically eligible for execution.[4] I use the Court's reasoning in *Hall* to argue, as others have,[5] that severely mentally ill defendants should be categorically barred from execution.

The Court's opinion in *Hall* found fault with Florida's inflexible system for defining intellectual disability, and in so doing emphasized several unique aspects of death penalty jurisprudence.[6] In particular, the Court highlighted the importance of individualized sentencing in capital cases and the need to avoid "rigid rule[s]" that might create an "unacceptable risk that persons with intellectual disability will be executed."[7] Further, the Eighth Amendment bars executing someone with an intellectual disability because all persons with intellectual disabilities have diminished culpability and, due to their

1. Hall v. Florida, No. 12-10882, slip op. (U.S. May 27, 2014), http://www.supremecourt.

2. Atkins v. Virginia, 536 U.S. 304 (2002) (holding that executions of the intellectually disabled are prohibited by the Eighth Amendment). Juveniles are also categorically barred from the death penalty. Roper v. Simmons, 543 U.S. 551 (2005).

3. *Hall*, slip op. at 5.

4. *Id.*

5. *E.g.*, Lyn Entzeroth, *The Challenge and Dilemma of Charting a Course to Constitutionally Protect the Severely Mentally Ill Capital Defendant from the Death Penalty*, 44 AKRON L. REV. 529, 556 (2011).

6. Most of the procedures unique to capital trials are outside the scope of this essay. Several of these procedural requirements include: a bifurcated trial with separate guilt and penalty phases, McGautha v. California, 402 U.S. 183, 210 (1971), and an individualized (rather than mandatory) sentencing procedure, Gregg v. Georgia, 428 U.S. 153 (1976), among others.

7. *Hall*, slip op. at 1.

limitations, are unable either fully to understand their crimes or to be deterred effectively.[8] Therefore, the goals of neither retribution nor deterrence can justify executing someone with an intellectual disability. In many ways, the *Hall* decision thus echoes concerns first raised in *Atkins* when the Court outlawed the execution of intellectually disabled persons. Next, the *Hall* Court wrote that intellectually disabled persons "face a special risk of wrongful execution"[9] because "they are more likely to give false confessions, are often poor witnesses, and are less able to give meaningful assistance to their counsel."[10] This concern relates to the fairness of a capital trial with a cognitively limited defendant. Capital defendants with an intellectual disability are vulnerable to an inadequate trial, in part because of the complexity of the sentencing phase,[11] and therefore are subject to an increased risk of unconstitutional execution.

The Court in *Hall* thus ruled that unduly rigid definitions of intellectual disability are unconstitutional and strengthened the categorical prohibition against executing intellectually disabled people. However, *Hall* did not address a question that advocates and scholars have been asking for years: Why does the Eighth Amendment bar a death sentence for an intellectually disabled person, but not for someone with a severe mental illness?[12] Though "the parallels between the severely mentally ill and the individuals protected by *Atkins*. . . are remarkable,"[13] severely mentally ill defendants are eligible for death sentences. The number of severely mentally ill persons who have been

8. *Id.* at 6.

9. *Id.* at 7 (quoting Atkins v. Virginia, 536 U.S. 304, 320-21 (2002)).

10. *Id.* at 7.

11. A.B.A., *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*, 31 HOFSTRA L. REV. 913, 921 (2003) (recognizing the "extraordinary complexity and demands of capital cases").

12. *E.g.*, Entzeroth, *supra* note 5, at 556 (collecting sources arguing for a categorical bar against executing mentally ill defendants and arguing that current constitutional standards "do not adequately protect individuals who suffer from severe mental illness"); *The Execution of Mentally Ill Offenders*, AMNESTY INT'L (Jan. 2006), http://www.amnesty.org/en/library/asset/AMR51/003/2006/en/73c0b3fe-d46f-11dd-8743-d305bea2b2c7/amr510032006en.pdf (arguing that severely mentally ill defendants should be exempt from execution and comparing severe mental illness to intellectual disability); Marc Bookman, *How Crazy Is Too Crazy to Be Executed?*, MOTHER JONES (Feb. 12, 2013), http://www.motherjones.com/politics/2013/02/andre-thomas-death-penalty-mental-illness-texas. For a more comprehensive list of resources related to mental illness and the death penalty, see generally Jean Mattimoe, *The Death Penalty and the Mentally Ill: A Selected and Annotated Bibliography*, 5 THE CRIT 1 (2012); DEATH PENALTY INFO. CTR., http://www.deathpenaltyinfo.org/mental-illness-and-death-penalty (last visited July 7, 2014).

13. Entzeroth, *supra* note 5, at 559.

executed is too numerous to count or document systematically.[14] Andre Thomas, for example, is on death row in Texas; he was convicted of cutting out his children's organs before attempting suicide.[15] While in prison, he gouged out both of his eyes and ate one of them because he thought the government could otherwise read his thoughts.[16] On August 5, 2013, Florida executed John Ferguson, who had a diagnosis of paranoid schizophrenia and thought he was the "Prince of God."[17] He also believed he "had powers drawn from the Sun."[18]

The law of competency, rather than the culpability-based reasoning in *Hall* and *Atkins*, governs the execution of mentally ill prisoners. The Supreme Court's current jurisprudence on competency to be executed does little to assist profoundly mentally ill defendants such as Thomas and Ferguson.[19] This is in part because the law of competency deals with whether or not a person understands the reason for his execution, *not* whether a person's psychiatric illness caused him to be less culpable for the underlying crime itself. This competency jurisprudence originated in 1986 with *Ford v. Wainwright*, in which the Court held that the Eighth Amendment "prohibits the State from inflicting the penalty of death upon a prisoner who is insane."[20] The Supreme Court later affirmed *Ford v. Wainwright* and held that a capital defendant must only have a "rational understanding of the reason for the execution."[21] The "rational understanding" requirement is distinct from the categorical prohibition against executing intellectually disabled defendants. It focuses not on the defendant's diminished culpability (even if he was mentally ill at the

14. Marc Bookman, *13 Men Condemned To Die Despite Severe Mental Illness*, MOTHER JONES (Feb. 12, 2013), http://www.motherjones.com/politics/2013/01/death-penalty-cases-mental-illness-clemency (listing several examples of mentally ill people who have been executed and noting that "[m]any legal observers believe that barring the death penalty for the severely mentally ill, given their dissociation from reality, is the next frontier in capital jurisprudence"); *Mental Illness and the Death Penalty: Examples of Mentally Ill Who Were Executed*, DEATH PENALTY INFO. CTR., http://www.deathpenaltyinfo.org/mental-illness-and-death-penalty#executions (last visited July 8, 2014) (indicating that its long list of mentally ill people who have been executed is "not exhaustive").

15. Bookman, *How Crazy Is Too Crazy to Be Executed*, *supra* note 12.

16. *Id.*

17. David Ovalle, *Miami Killer John Errol Ferguson Executed*, MIAMI HERALD, Aug. 5, 2013, http://www.miamiherald.com/2013/08/05/3543609/miami-mass-killer-john-ferguson.html.

18. Ed Pilkington, *Florida Executes Mentally Ill Man Despite Constitutional Problem*, GUARDIAN, Aug. 5, 2013, http://www.theguardian.com/world/2013/aug/05/florida-execute-mentally-ill-john-ferguson.

19. Entzeroth, *supra* note 5, at 557-58 (finding that "the Eighth Amendment currently does not protect all or even a substantial majority of severely mentally ill capital defendants" because of its focus on competency rather than culpability).

20. 477 U.S. 399, 407 (1986).

21. Panetti v. Quarterman, 551 U.S. 930, 958 (2007).

time of the crime), but rather on the retributive importance of a death row prisoner's understanding of the reasons for his punishment.[22] Retribution is not served by executing someone who does not understand his punishment because he cannot "recognize at last the gravity of his crime."[23] The competency standard therefore focuses on the prisoner's mental state at the time of his execution in an attempt to ensure that only those who understand the "law's most severe sentence"[24] will receive it.

The extensive litigation leading up to John Ferguson's execution provides a useful illustration of the difference between the culpability-based categorical bar and the competency-based standard, which focuses only on the defendant's understanding of the proceedings against him. The Florida Supreme Court acknowledged that "Ferguson suffers from mental illness," and yet it upheld the trial court's "determination that Ferguson's mental illness does not interfere with his rational understanding of the facts of his pending execution."[25] According to the Florida Supreme Court, Ferguson "understands what is taking place and why" and "the Eighth Amendment requires only that defendants be aware of the punishment they are about to receive and the reason they are to receive it."[26] The low standard applied by the Florida court merely addresses the issue of whether the defendant currently understands his legal situation, not the defendant's blameworthiness for the crime itself.[27] Ferguson, of course, could have introduced evidence of his mental illness during the sentencing phase of his trial in order to argue that he was not sufficiently culpable to receive the death penalty,[28] but the ultimate decision about his sentence still rested with the jury. Ferguson's diminished culpability

---

22. *Id.* at 958-59 ("[E]xecuting an insane person serves no retributive purpose."); Entzeroth, *supra* note 12, at 555-56 (explaining the differences between the competency doctrine of *Ford* and *Panetti* and the categorical bars against execution of the intellectually disabled).

23. *Panetti*, 551 U.S. at 958.

24. Hall v. Florida, No. 12-10882, slip op. at 7 (U.S. May 27, 2014), http://www.supremecourt.gov/opinions/13pdf/12-10882_kkg1.pdf.

25. Ferguson v. State, 112 So. 3d 1154, 1156 (Fla. 2012).

26. *Id.* at 1157.

27. For a more detailed explanation of competency and for an argument that the trial competency standard should be higher in a capital case than in regular criminal trials, see J. Amy Dillard, *Madness Alone Punishes the Madman: The Search for Moral Dignity in the Court's Competency Doctrine as Applied in Capital Cases*, 79 TENN. L. REV. 461 (2012).

28. *E.g.*, Lockett v. Ohio, 438 U.S. 586, 605-06 (1978) (holding that the Eighth Amendment requires that capital defendants be allowed to introduce any mitigating evidence during the sentencing phase, including evidence of "mental deficiency"); *see* Wiggins v. Smith, 539 U.S. 510, 512-513 (2003) (holding a defendant's trial counsel ineffective for failing to present evidence of "diminished mental capacities" that would have "further augment[ed] his mitigation case").

due to his mental illness therefore did not result in a categorical bar against his execution.

The myopic focus on the question of whether the defendant understands his legal situation makes little sense in light of the Court's broader death penalty jurisprudence, including the *Hall* decision. Since all of the reasons for not executing intellectually disabled people set forth in *Hall*—reduced culpability, ineffective deterrence, and the risk of an unfair trial[29]—apply equally to profoundly mentally ill defendants, it is both unjustifiable and inconsistent for the Court to allow those with a severe mental illness to be executed.[30] First, mentally ill defendants who suffer from delusions and other psychoses are less culpable because they often cannot fully comprehend their actions, or they act without a full understanding of the consequences.[31] A person who, like John Ferguson, thinks he is the "Prince of God," apparently misunderstands the nature of his crime and its consequences.[32] As many scholars have argued, the general characteristics of severe mental illness – the inability to conform one's actions to society's moral standards, the fact that a person with a mental illness can understand that his actions are wrong but may still commit a crime despite that understanding due to that illness, among others – render defendants like Ferguson less culpable than those without mental illnesses, even though their crimes may be some of the most horrific (perhaps because of the very mental illnesses at issue in their cases). Second, the death penalty does not effectively deter those who suffer from severe mental illness.[33] The same inability to understand reality prevents a person with paranoid schizophrenia from being deterred by possible punishments. Finally, like intellectually disabled people, mentally ill defendants risk an unfair

---

29. Enzteroth, *supra* note 5, at 557-58 (arguing that "such severely mentally ill prisoners, those suffering from psychosis or schizophrenia, possess many of the same attributes, including diminished culpability and blameworthiness, as others who have been exempted from the death penalty" and noting that mentally ill defendants are vulnerable to an unfair trial "[p]articularly during the capital sentencing phase").

30. *Id.*; Christopher Slobogin, *Mental Illness and the Death Penalty*, 24 MENTAL & PHYSICAL DISABILITY L. REP. 667 (2000) (discussing various arguments for preventing mentally ill defendants with psychoses from being executed); *see also* Franklin J. Bordenave & D. Clay Kelly, *The Death Penalty and Mentally Ill Defendants*, 39 J. AM. ACAD. PSYCHIATRY & L. ONLINE 284 (2010), http://www.jaapl.org/content/38/2/284.full.pdf+html (describing two recent cases in which the supreme courts of Florida and Georgia explicitly ruled that severely mentally ill people could be executed).

31. Entzeroth, *supra* note 5, at 556 (noting that severe mental illnesses such as schizophrenia "can disable and deprive their victims of rational thought processes and control," and citing relevant psychological research).

32. *Id.* at 559.

33. *Id.*

trial because they are unable to participate in their own case as effectively as defendants without psychiatric disorders.[34]

There is one especially important way in which mentally ill defendants are vulnerable to an unfair trial: though defendants often present mental illness as a mitigating circumstance that weighs against imposing the death penalty, many juries view mental illness as an *aggravating* circumstance favoring execution.[35] This is especially important in states like Texas,[36] which require the jury to find that a capital defendant is a "future danger" to society in order to execute him.[37] According to the American Bar Association's 2013 recommendations for capital punishment reform, the Texas system puts future dangerousness "at the center of the jury's punishment decision" because the issue of future violent behavior is a threshold question in a capital sentencing procedure.[38] Capital sentencing juries therefore often "appear to equate mental illness with future dangerousness, thereby viewing mental illness as an 'aggravating' rather than a mitigating factor in sentencing."[39]

Criminal defense attorneys are therefore forced to make a "tactical decision" concerning whether to present evidence of their clients' mental illnesses in mitigation.[40] In John Ferguson's case, the Eleventh Circuit rejected a claim of ineffective assistance of counsel and upheld his attorney's decision not to present "damaging information . . . regarding . . . [his] anti-social personality disorder."[41] Thus, even though evidence of a defendant's mental illness should be viewed as a mitigating factor, instead it is a "double-edged sword" in that

---

34. *Id.* at 558 (noting that a mentally ill defendant is less able to "assist in his defense, make rational legal decisions, or adequately advise his lawyer about meaningful defenses").

35. *Id.*; Ellen Fels Berkman, Note, *Mental Illness as an Aggravating Circumstance in Capital Sentencing*, 89 COLUM. L. REV. 291 (1989).

36. Texas is also a significant state because it has executed the largest number of people in capital punishment's modern era. It is responsible for 515 of the 1,383 executions that have taken place since 1976; the next highest state is Oklahoma, which is responsible for 111 executions. *Number of Executions by State and Region Since 1976*, DEATH PENALTY INFO. CTR., http://www.deathpenaltyinfo.org/number-executions-state-and-region-1976 (updated July 11, 2014).

37. TEX CODE CRIM. PROC. ANN. art. 37.071 (West 2013)*; see also* Adam Liptak, *Appealing a Death Sentence Based on Future Danger*, N.Y. TIMES (June 14, 2004), http://www.nytimes.com/2004/06/14/us/appealing-a-death-sentence-based-on-future-danger.html (noting that "Texas juries in capital cases must make a prediction . . . that the defendant will probably commit more violent acts").

38. *Evaluating Fairness and Accuracy in State Death Penalty Systems: The Texas Capital Punishment Assessment Report*, AM. BAR ASS'N. viii (2013), http://www.americanbar.org/content/dam/aba/administrative/death_penalty_moratorium/tx_complete_report.authcheckdam.pdf.

39. Mattimoe, *supra* note 12, at 3 (citing Ronald J. Tabak, *Overview of the Task Force Proposal on Mental Disability and the Death Penalty*, 54 CATH. U. L. REV. 1153, 1153-1158 (2005)).

40. Ferguson v. Sec'y for Dep't of Corr., 580 F.3d 1183, 1195-96 (11th Cir. 2009).

41. *Id.* at 1196.

juries often consider "stigmatizing" evidence of mental disorders as aggravating factors.[42] Surely this creates an "unacceptable risk"[43] that a severely mentally ill defendant will be unconstitutionally executed, since the very reason for his diminished culpability is likely to be viewed as an aggravating circumstance favoring death. As a result, severely mentally ill defendants are often unable to present a persuasive and comprehensive case for mitigation.[44] The *Hall* Court wrote that the Eighth Amendment prohibits the execution of intellectually disabled persons because such a prohibition "protect[s] the integrity of the trial process."[45] The trial process is similarly compromised by the execution of severely mentally ill inmates who face great dangers in their mitigation cases, and the resulting "special risk of wrongful execution"[46] calls for a categorical bar on execution of severely mentally ill prisoners.

In sum, the reasoning in *Hall* further solidifies what advocates have been arguing since the Supreme Court outlawed the execution of intellectually disabled defendants: the Court's reasons for the categorical bar apply with equal force to severely mentally ill inmates. The Court relied on "established medical practice" and a persuasive consensus of state legislatures[47] to rule that Florida's rigid procedures for determining intellectual disability violated the Eighth Amendment. In contrast, the Court has declined to hear cases in which defendants argue that the intellectual disability exemption should be expanded to include severely mentally ill defendants;[48] indeed, "no state court has extended the [intellectual disability] rationale to severe mental illness."[49] Perhaps courts have resisted confronting this constitutional problem because of the sheer number of severely mentally ill prisoners who are on death row and the challenging task of protecting the rights of those who commit some of the most heinous crimes. Other difficulties abound and require further research and scholarly discussion. For example, the issue of defining a severe mental illness is no easy task. Some state legislators have drafted laws to prevent the

---

42. Erik Thompson, *The "Double Edged" Dilemma: The Eleventh Circuit's Devaluation of Mental Health Mitigators in* Evans v. Secretary, Department of Corrections, 34 BOS. C. J. L & SOC. JUST. 27, 32 (2014).

43. Hall v. Florida, No. 12-10882, slip op. at 1 (U.S. May 27, 2014), http://www.supremecourt.gov/opinions/13pdf/12-10882_kkg1.pdf.

44. Entzeroth, *supra* note 5, at 546 (noting that mental illness can "mak[e] the defendant more dangerous and deserving of death" in the eyes of the jury); *id.* at 558 (arguing that jurors may "view the defendant's mental illness as an aggravating factor").

45. *Hall*, slip op. at 7.

46. *Id.*

47. *Id.* at 10, 12-16.

48. Entzeroth, *supra* note 5, at 575-76 (discussing the Supreme Court's denial of certiorari in a 2009 case on this issue, *Baumhammers v. Pennsylvania*, 558 U.S. 821 (2009)).

49. *Id.* at 571.

imposition of the death penalty on severely mentally ill defendants, and have defined severe mental illness as "schizophrenia, schizoaffective disorder, bipolar disorder, major depression, and delusional disorder."[50] Though this may seem like a straightforward list, evaluating defendants to determine who is suffering from one of these disorders may also yield uneven results, just as Florida's IQ tests did in *Hall*. Nonetheless, the Court must exercise its "independent judgment," rely on medical science, and discern our evolving understanding of severe mental illness as it did in *Hall*[51] with respect to intellectual disability and revisit the issue of whether it is constitutional to execute someone with a severe mental illness.

Lise E. Rahdert is a member of the Yale Law School J.D. Class of 2015. The author would like to thank Professor Stephen Bright for his helpful comments, Marc Bookman for his suggested edits, and Matt Sipe and the editors of the Yale Law Journal *for their feedback.*

Preferred Citation: Lise E. Rahdert, Hall v. Florida *and Ending the Death Penalty for Severely Mentally Ill Defendants*, 124 YALE L.J. F. 34 (2014), http://yalelawjournal.org/forum/hall-v-florida-and-ending-the-death-penalty-for-severely-mentally-ill-defendants.

50. Entzeroth, *supra* note 5, at 564.

51. *Hall*, slip op. at 19.