

In the Indiana Supreme Court

Joseph E. Corcoran,
Appellant,

v.

State of Indiana,
Appellee.

Supreme Court Case Nos.
02S00-0508-PD-350
24S-SD-222

Trial Court Case No.
02D04-9707-CF-465



Order

In 1999, a unanimous jury found Corcoran guilty of four counts of murder for killing his brother, James Corcoran; his sister's fiancé, Robert Scott Turner; and their two friends, Timothy Bricker and Douglas Stillwell. The State sought the death penalty and alleged one aggravating circumstance under Indiana Code section 35-50-2-9 that made Corcoran eligible for a death sentence: multiple murders. The jury unanimously recommended a death sentence, and the Allen Superior Court imposed the death sentence.

In Corcoran's first appeal, this Court affirmed in part, vacated Corcoran's death sentence, and remanded with instructions. *Corcoran v. State*, 739 N.E.2d 649 (Ind. 2000). On remand, the Allen Superior Court resentenced Corcoran to death. We affirmed that sentence in Corcoran's second direct appeal. *Corcoran v. State*, 774 N.E.2d 495 (Ind. 2002). We then affirmed the Allen Superior Court's judgment that Corcoran was competent to (1) waive his post-conviction review and (2) be executed. *Corcoran v. State*, 820 N.E.2d 655 (Ind. 2005), *aff'd on reh'g*, 827 N.E.2d 542 (2005). Corcoran tendered a second post-conviction petition, which the Allen Superior Court dismissed as untimely; we affirmed. *Corcoran v. State*, 845 N.E.2d 1019 (Ind. 2006).

The United States District Court for the Northern District of Indiana granted Corcoran habeas corpus relief in part and ordered the state court to resentence Corcoran to a sentence other than death. *Corcoran v. Buss*, 483 F.Supp.2d 709 (N.D. Ind. 2011). The United States Court of Appeals for the Seventh Circuit affirmed in part, reversed in part, and remanded with instructions allowing Indiana to reinstate the death penalty. *Corcoran v. Buss*, 551 F.3d 703 (7th Cir. 2008). The Supreme Court of the United States granted Corcoran's request for certiorari and remanded to the Seventh Circuit to address certain claims it had left undecided. *Corcoran v. Levenhagen*, 558 U.S. 1 (2009). The United States Court of Appeals for the Seventh Circuit granted habeas corpus relief and remanded for a new sentencing hearing in the state court. *Corcoran v. Levenhagen*, 593 F.3d 547 (7th Cir. 2010). The Supreme Court of the United States granted certiorari, vacated the Seventh Circuit's 2010 decision, and remanded for further proceedings. *Wilson v. Corcoran*, 562 U.S. 1 (2010). The United States District Court for the Northern District of Indiana ultimately denied all habeas corpus relief. *Corcoran v. Buss*, 2013 WL 140378 (N.D. Ind. 2013). And the United States Court of Appeals for the Seventh Circuit affirmed. *Corcoran v. Neal*, 783 F.3d 676 (7th Cir. 2015), *cert. denied*, 577 U.S. 1237 (2016).

On June 26, 2024, the State of Indiana filed its “Motion to Set Execution Date” and states the following in support: (1) the state and federal review for Corcoran’s convictions has ended; (2) as of June 26, 2024, the State was unaware of any pending requests Corcoran had filed to review his convictions and sentence; and (3) there are no stays pending on Corcoran’s death sentence. In his Response and Surreponse to the State’s motion, Corcoran argues that executing his death sentence would violate the Eighth Amendment to the U.S. Constitution and Article I, § 16 of the Indiana Constitution because of (a) his long-standing mental illness, and (b) the State’s failure to disclose information about its current execution protocol. In Reply, the State argues that “[t]his proceeding is neither the time nor the place for this Court to consider” the merits of Corcoran’s arguments. Corcoran, however, asserts in his Surreponse that we have the authority to review the merits of his claims under Section 35-50-2-9(k). That statute provides in relevant part,

A person who has been sentenced to death and who has completed state post-conviction review proceedings may file a written petition with the supreme court seeking to present new evidence challenging the person's guilt or the appropriateness of the death sentence if the person serves notice on the attorney general. The supreme court shall determine, with or without a hearing, whether the person has presented previously undiscovered evidence that undermines confidence in the conviction or the death sentence.

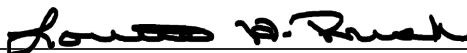
I.C. § 35-50-2-9(k).

The statute’s plain terms limit “our consideration to claims involving ‘previously undiscovered evidence’ that have been presented to us.” *Williams v. State*, 793 N.E.2d 1019, 1022 (Ind. 2003). Corcoran’s arguments, however, are not based on previously undiscovered evidence; he relies instead on past evidence of mental illness. While a petitioner can raise claims involving previously undiscovered evidence through a written petition under Section 35-50-2-9(k), raise constitutional claims through a successive petition for post-conviction relief under Post-Conviction Rule 1(12), or raise challenges to an execution protocol through a civil lawsuit, we agree with the State that a “Motion to Set Execution Date” is not any of those proceedings, and the only thing properly before us is the State’s motion.

Being duly advised, the Court finds there is no stay of execution now in effect and the only issue properly before us is our administrative task to set an execution date under Indiana Code section 35-50-2-9(h) and Indiana Criminal Rule 6.1(G)(1).

It is ORDERED that execution of the death sentence imposed on Joseph E. Corcoran be carried out on **December 18, 2024**, before the hour of sunrise. This order constitutes the warrant for execution described in Indiana Code sections 35-38-6-2, -3, and -8. The superintendent of the Indiana State Prison is directed to carry out the execution in accordance with law.

Done at Indianapolis, Indiana, on 9/11/2024.



Loretta H. Rush
Chief Justice of Indiana

All Justices concur.