

Response to Motion to Set Execution Date
Joseph Corcoran

IN THE
INDIANA SUPREME COURT

CASE NO. 24S-SD-00222

JOSEPH E. CORCORAN,	)	Appeal from the
Appellant/Defendant	)	Allen Superior Court 4,
	)	
v.	)	Cause No. 02D04-9707-CF-465
	)	
STATE OF INDIANA	)	The Honorable Frances C. Gull,
Appellee	)	Judge

RESPONSE TO MOTION TO SET EXECUTION DATE

Corcoran is seriously mentally ill. And how does his mental illness manifest itself? Corcoran is under the paranoid delusion that prison guards are torturing him with sound waves.

Corcoran v. State, 820 N.E.2d 655, 665 (Ind. 2005) (Rucker, J., dissenting).

No one contests that Corcoran suffers from a mental illness. This is clear from his delusion that prison guards torture him daily with an ultrasound machine, his conversations with individuals who are not there, and his delusion that he suffers from an involuntary speech disorder.

Corcoran v. Buss, 551 F.3d 703, 714-15 (7th Cir. 2008) (Williams, J., dissenting).

An unspeakable tragedy took the lives of four people who unquestionably deserved to live. This tragedy, however, has a nexus to a serious mental illness that persists through today. This Court should therefore deny the motion to set an execution date, order briefing and consider oral argument on whether executing the unquestionably seriously mentally ill Appellant would violate the Eighth Amendment to the United States Constitution and Article I, § 16 of the Indiana Constitution.

The State presents a sterile recitation of the procedural history. The State avoids, marginalizes, and ignores the through-line of Corcoran’s case – a profound and serious mental illness, schizophrenia. The State has had ample opportunity to challenge the extent and the depth of the mental illness – but as Judge Williams of the Seventh Circuit Court of Appeals noted in the competency context: “Indeed, the State presented no expert who contradicted the conclusions of these three experts.” *Corcoran*, 551 F.3d at 717 (Williams, J., dissenting).

I. Corcoran is unquestionably seriously mentally ill.

The State conceded that Corcoran is mentally ill. PC R. 242 (“The State concedes that Petitioner is mentally ill.”).¹ This Court has also recognized that Corcoran was mentally ill and suffered from paranoid schizophrenia. *Corcoran v. State*, 820 N.E.2d 655, 660 (Ind. 2005).

At the post-conviction hearing, the trial court noted that “[t]he State of Indiana has conceded that the Defendant suffers from mental illness, and I think that is probably a wise concession, gentlemen, as the evidence that was presented at the competency hearing as well as the evidence presented at Mr. Corcoran’s trial was that he suffers from a mental disease or defect of mental illness.” PC Comp. Dec. Tr. at 4². The trial court accepted the

¹ “R” references the direct appeal record. “Def.’s Pre-Sent. Memo” references the sentencing memo filed at the sentencing proceedings contained in the supplemental record on direct appeal. “PC R” references the post-conviction trial filings record. “PC Comp. Tr.” references the competency and waiver hearing held in post-conviction. “PC Comp. Dec. Tr.” refers to the state court’s announcement of the competency decision.

² This document is included in the post-conviction Appendix at page 247.

State's concession that Corcoran was mentally ill, adding "that has never been the issue, folks, whether or not Mr. Corcoran suffers from mental illness." *Id.* at 5; *see also* PC R 247.

Undeniably, Corcoran suffers from a serious mental illness, schizophrenia.

A. Unrefuted evidence of a substantial mental illness existed before and during trial.

Corcoran has consistently been diagnosed with a severe mental illness. *See e.g.* R 2607, Def.'s Pre-Sent. Memo p. 2, Ex. A p. 4 (1992 diagnoses of schizoid personality disorder and major depression). Substantial evidence was presented at the penalty phase of his trial, his judicial sentencing proceeding and in post-conviction that Corcoran had been suffering from delusions and hallucinations at the time of his trial and before the offenses. *See* Def.'s Pre-Sent. Memo. at 23 (Dr. Larry Davis, M.D. – diagnosed schizophrenia); (Dr. Philip Coons, M.D. – diagnosed paranoid schizophrenia). Despite these flourishing mental illnesses, Corcoran never received mental health services or treatment until he was in prison for the current offense. R 2683-84 (previous lawyers never informed family of extent of mental illness and if they had, the family would have pursued treatment options).

Evidence of Corcoran's severe mental illness came forward during trial despite Corcoran's own attempts to minimize and conceal his grossly psychotic delusions and hallucinations. As Dr. Coons testified, "the person with paranoid schizophrenia generally minimizes their symptoms and doesn't bring attention to them...unless you know what door to open, what question to ask, you may well miss it because they keep it to themselves. And that was true of Mr. Corcoran. Had I not known about some kind of sleep problem, I don't think I would have uncovered this delusional system." R at 2706. Dr. Coons testified that at the time of the murders, Appellant was suffering from paranoid schizophrenia. *Id.* at 2729. At Corcoran's penalty phase, Dr. Engum testified that Appellant was "trying to mask

it. He's trying to hide it. He's very secretive, again consistent with paranoia and suspiciousness." R 2318.

Corcoran would have avoided the death penalty altogether were it not for his mental illness which affected the decision-making process during Corcoran's legal proceedings. As Dr. Coons concluded, Corcoran's "ultimate refusal to accept either a plea bargain or a bench trial without the death penalty was a product of his mental illness." Def.'s Pre-Sent. Memo. at 24. Corcoran's mental illness impeded State offered paths to avoid a death sentence altogether.

Moreover, Corcoran's symptoms of schizophrenia predated the trial. Additional evidence shows Corcoran's hallucinations and delusions existed before the murders. First, in the early 1990's, Mr. Russell Branning observed Corcoran on many occasions. In his affidavit, made as an offer of proof, Mr. Branning described Corcoran conversing with people who were not there:

Joe would be sitting either at our house or elsewhere and I would see him concentrating on something and begin nodding his head or talking like he was answering a question although *no one was speaking to him*. This occurred many times. I cannot recall a specific number. I believed that when that happened, Joe was having conversations with people who were not present. I also believed that Joe was mentally ill because of his actions in my presence.

PC Comp. Tr. at 79, Defense Ex. V par. 4 (Affidavit of Russell Branning) (emphasis added).

Second, another neighbor and classmate of Corcoran's, Ms. Jaynee Buss, also observed Corcoran experiencing hallucinations—people talking about him when this did not occur. Referring to Corcoran, Ms. Buss stated in her affidavit:

Joe's perception of events seemed impaired. When we would be riding on the bus or elsewhere, Joe would insist that people were talking about him. However, because I was present and seeing and hearing what was going on, I knew that this was not true.

PC Comp. Tr. at 78-79, Defense Ex. U par. 7 (Affidavit of Jaynee Buss).

And finally, the delusions were featured at the commencement of the sentencing phase. The trial court inquired of Corcoran regarding the assistance provided by his trial counsel. Corcoran had complaints:

THE COURT: Is there anything you feel your attorneys have failed to do in representing you?

THE DEFENDANT: Um, I feel that they've failed to get me treatment for my sleeping disorder. Other than that, no.

THE COURT: You feel they have failed to treat you for what, sir?

THE DEFENDANT: My sleeping disorder.

THE COURT: All right. And what is it that you expected your attorneys to do for your sleeping disorder, Mr. Corcoran?

THE DEFENDANT: Simply give me a court order so that I could go to a sleeping disorder clinic.

R.2587-88.

B. Unrefuted evidence of a substantial mental illness presented during hearing.³

In 2003, all three mental health experts testified at Corcoran's post-conviction competency hearing that Corcoran was not competent to waive his appeals. PC Comp. TR. 13, 59, 66. Every expert concluded Corcoran suffers from paranoid schizophrenia. *Id.* at 11, 48, 66. All three testified that Corcoran's decision-making regarding whether to pursue state post-conviction review was not rational but, instead, was based on a delusion that the prison tortured him with an ultrasound machine. *Id.* at 14, 53, 66-67.

Dr. George Parker, a board-certified forensic psychiatrist, testified. *Id.* at 39-41. Dr. Parker diagnosed Corcoran with paranoid schizophrenia based on his delusions and

³ Appellant offers this as a summary of the testimony and in doing so does not seek reconsideration of the long-settled competency question.

auditory hallucinations, along with his negative symptoms of schizophrenia. *Id.* at 47, 48.

As Dr. Parker noted, Corcoran believes the prison's ultrasound machine tortures him with sounds and several physical symptoms. *Id.* at. 50. Corcoran hears sounds that he believes are being projected from this ultrasound machine, which he also thinks can broadcast his thoughts throughout the prison. *Id.* at 51. He believes that he can hear people talking about him through the walls of his cell. *Id.* Additionally, Corcoran holds a delusional belief he "speaks in his sleep and says embarrassing or provocative things that make people act in strange ways or perhaps hostile ways towards him. When that delusion is more intensive, he begins to believe that he . . . while awake . . . is essentially asleep and speaking involuntarily." *Id.* at 49.

Dr. Parker opined these delusions and hallucinations prevented Corcoran from making a rational decision about whether to end his appeals. *Id.* at 53. Dr. Parker also noted the stigma Corcoran attached to his mental illness and Corcoran's overwhelming desire to downplay it, noting: "It speaks to how powerful the stigma is against serious mental illness, that he would rather be executed than admit that schizophrenia might be contributing to his desire to die." *Id.* at 56-57. Dr. Parker noted that Corcoran attributes his difficulties "to some physical disorder" and that "he truly believes" there is an ultrasound machine, and that "[y]ou don't break through that illogic. That is the nature of the delusion. You can't convince the person otherwise." *Id.* at 58.

Dr. Kaplan diagnosed Corcoran with paranoid schizophrenia, "a severe mental illness." *Id.* at 11. Dr. Robert Kaplan, a clinical psychologist, a clinical psychologist, reviewed extensive records regarding Corcoran and conducted a clinical interview and psychological testing. *Id.* at 9, 11. Dr. Kaplan further reported Corcoran's delusions that he

suffers from a speech disorder and is being tortured by an ultrasound machine. *Id.* at 12-13, 14.

Dr. Kaplan concluded Corcoran did not have the capacity to make a rational decision because:

[H]e has, -- he has a psychosis which is paranoid schizophrenia that is leading him to believe that, you know, one of the reasons that he wants to die is because he doesn't want to continue to suffer with this speech disorder that he really doesn't have. And another reason he wants to die is because he doesn't want to continue to be a victim of the guards' ultrasound machine. And that is a highly bizarre belief that it is not likely to be in existence either.

Id. at 14. Dr. Kaplan testified Corcoran had a severe mental illness:

[Defense Counsel] Is Mr. Corcoran suffering from a mental disease or disorder, or defect?

[Dr. Kaplan] He is suffering from a very severe mental disease and defect.

[Defense Counsel] What mental disease is that?

[Dr. Kaplan] Paranoid schizophrenia.

Id. at 16-17.

Dr. Kaplan affirmed that Corcoran's "paranoid schizophrenia is creating a reality in his mind that doesn't exist, and on the basis of the reality that doesn't exist, he is making decisions about whether he wishes to proceed with his defense against the death penalty or not." *Id.* at 17. Dr. Kaplan administered the MacArthur Competency Assessment Tool. *Id.* at 19. It indicated that Corcoran had a "barely adequate understanding of ... and ability to determine what facts were relevant versus what facts were irrelevant to present to his own Counsel." *Id.* at 20. This was evidenced by his complete inability to think of one piece of information that would be needed to make a decision on whether to plead guilty in a hypothetical situation but would advise such a person to plead guilty. *Id.* at 20. This "is

exactly the opposite of what he did in the previous instance.” *Id.* at 20. In making an important decision about his life, Corcoran was not able to think of anything that would be relevant to know in order to make that decision. *Id.* at 20-21. On cross, Dr. Kaplan repeated that “for a psychotic reason he told me he didn’t want to go on with these proceedings... .” *Id.* at 31. Corcoran “can’t even conceive of reality as a normal person would” (*id.* at 32), and “can’t think straight [and] can’t reason logically.” *Id.*

Next, Dr. Kaplan noted that while medications may help Corcoran, they have a “variable effect,” and he is still paranoid and delusional while taking them. *Id.* at 34 (“But, it didn’t appear that at any time he was not paranoid or not delusional.”) The medications may dampen but do not control or eliminate Corcoran’s symptoms of paranoid schizophrenia.

Dr. Edmund Haskins, a neuropsychologist, thirdly diagnosed Corcoran as a paranoid schizophrenic with delusions. *Id.* at 66. Dr. Haskins found Corcoran suffers from two delusions: “one, involving the notion that he has, um, involuntary speech, and the other one involving the notion that the guards in the prison have an ultrasound machine that they are using to torment him. On both counts, I believe that this indicates paranoid schizophrenia.” *Id.*

Dr. Haskins testified that Corcoran’s “psychoses do not permit him to reason and make a reasoned decision.” *Id.* at 67. Dr. Haskins affirmed that Corcoran needed to escape the pain of the delusions. *Id.* at 68 (“...he wants to escape in whatever way he can. And the only way open to him, is to bring about his own death.”); *Id.* at 69-70 (“wanting to choose the only option that is going to bring him what he perceives, as being relief, which is his

own death.”). Additionally, Dr. Haskins had “the very strong feeling [Corcoran] was attempting to minimize the severity of his underlying psychosis.” *Id.* at 71.

According to the unanimous experts, Corcoran’s mental illness prevents him from making rational decisions. Dr. Kaplan testified that Corcoran’s decision to waive was not rational because it was made on “the basis of a reality that doesn’t exist.” *Id.* at 17. Dr. Parker testified that Corcoran cannot make a rational decision because his schizophrenia has “a direct bearing on his thought process” and why he wants to be executed. *Id.* at 55. Dr. Haskins opined “his psychoses do not permit him to reason and make a reasoned decision in that way.” *Id.* at 67.

Each expert also testified that Corcoran could not rationally consult with counsel. Dr. Parker testified that because of the way Corcoran experiences life, “with its delusions and hallucinations and negative symptoms of schizophrenia, he is unable to process what, for most people would be reasonable advice regarding his legal proceedings.” *Id.* at 59. Dr. Haskins noted this uncooperativeness is not a choice, but a result of his mental illness and “the psychotic perception that he is being tormented and has this illness.” *Id.* at 70.

Drs. Parker, Kaplan and Haskins all testified that Corcoran’s decision to waive his appeals was based, not on logical reasoning, but on his overwhelming desire to escape his psychiatric symptoms. Dr. Parker noted that, in Corcoran’s view, his execution would be “a blessed relief [from] the daily torment of his symptoms of psychosis... .” *Id.* at 55. Corcoran told Dr. Kaplan that the reason “he wanted to die was because he wanted to be released from the quote, unquote, pain and suffering of his involuntary speech disorder which really doesn’t exist.” *Id.* at 19. Dr. Haskins agreed that “he wants to escape [from his discomfort]

in whatever way he can. And the only way open to him, is to bring about his own death.”

Id. at 68.

Corcoran was not malingering to present as a paranoid schizophrenic. Rather, he did everything he could to establish his rationality and lack of mental illness – he faked well. Dr. Kaplan testified at the post-conviction competency hearing he administered special psychological tests to determine if Corcoran was malingering, and the results showed that Corcoran was not malingering or feigning any mental disorder. “[I]f anything, they showed that he was trying to cover up his psychological symptoms and tried to look better than he really was.” *Id.* at 28. Dr. Parker stated that Corcoran “does his best to minimize the severity of his symptoms, to downplay that he might have any mental disorder...it is better for him psychologically to appear that he is criminally responsible, than to admit that he has a serious mental illness...” *Id.* at 56. Dr. Haskins testified that Corcoran was “attempting to minimize the severity of his underlying psychosis,” and did so “[i]n order to escape from his [delusions] . . . [by] bring[ing] about his own death.” *Id.* at 68, 71. The Department of Corrections agrees, as Dr. Parker noted “the current accepted diagnosis” reflected in prison medical records is schizophrenia. *Id.* at 44.

C. A close case – where decision makers split on the impact of the serious mental illness

This is a close case. As shown by the State’s procedural history, Corcoran won and lost at every level of federal court, the Northern District of Indiana, the Seventh Circuit, and the Supreme Court of the United States. Corcoran is unaware of any similar procedural history in a capital case.

The State fails to mention that the state procedural history is equally as tortured, but again is steeped in conflicting views of the serious mental illness. This Court unanimously

reversed the death sentence. *Corcoran v. State*, 739 N.E.2d 649 (Ind. 2000). Forever thereafter, this Court was not unanimous as to the appropriate sentence. Justice Rucker later dissented, “I respectfully dissent because I do not believe a sentence of death is appropriate for a person suffering a severe mental illness.” *Corcoran v. State*, 774 N.E.2d 495, 502 (Ind. 2002) (Rucker, J., dissenting). Justice Rucker noted that: “Because Indiana’s constitution affords even greater protection than its federal counterpart, I would hold that a seriously mentally ill person is not among those most deserving to be put to death. To do so in my view violates the Cruel and Unusual Punishment provision of the Indiana Constitution. Because Corcoran is obviously severely mentally ill, he should be sentenced to life without the possibility of parole, not death.” *Id.* at 503.

In post-conviction, over a vigorous dissent, this Court closed the door to state post-conviction review. *Corcoran v. State*, 820 N.E.2d 655 (Ind. 2005). However, this Court made these critical findings regarding Corcoran’s serious mental illness:

The post-conviction court here acknowledged in its written findings that Corcoran suffers from a mental illness. The State also concedes that Corcoran suffers from a mental illness. At the competency hearing, the State Public Defender presented the testimony of three mental health experts, each of whom concluded that Corcoran suffers from paranoid schizophrenia. One of the symptoms of Corcoran’s condition, according to the three experts, are recurrent delusions that Department of Correction prison guards are torturing him through the use of an ultrasound machine, causing him substantial pain and uncontrollable twitching.

Id. at 660 (footnote omitted). Justice Rucker again dissented, noting Corcoran’s serious mental illness: “It is apparent that since July 1997 Corcoran’s mental state has deteriorated significantly. So much so that his personality disorder has now developed into full-blown paranoid schizophrenia. In short, Corcoran is seriously mentally ill. And how does his mental illness manifest itself? Corcoran is under the paranoid delusion that prison guards

are torturing him with sound waves. As a result, Corcoran wants the State to execute him in order to end the pain. I am not willing to accommodate him.” *Id.* at 665 (Rucker, J., dissenting).

As happens with the seriously mentally ill, Corcoran changed his mind, but it was too late in the estimation of this Court. *Corcoran v. State*, 845 N.E.2d 1019 (Ind. 2006). Justice Rucker again dissented. Thus, in appellate proceedings before this Court, the only unanimous decision was in Corcoran’s favor.

D. The Court should consider whether the Indiana Constitution as well as the Eighth Amendment permit the execution of the severely mentally ill.

Justice Rucker raised a critical issue two decades ago – and it has only become more prevalent under contemporary standards. Corcoran’s schizophrenia, which causes him to experience persistent hallucinations and delusions, renders him “severely mentally ill.” For the reasons originally expressed by Justice Rucker, this Court should consider under both the Indiana Constitution, Ind. Const. art. I, § 16, and the Eighth Amendment of the United States Constitution that Corcoran is too severely mentally ill to be executed.

The Eighth Amendment restricts the ultimate sanction of capital punishment “to those offenders who commit ‘a narrow category of the most serious crimes and whose extreme culpability makes them the most deserving of execution.’” *Kennedy v. Louisiana*, 554 U.S. 407, 420 (2008) (quoting *Roper v. Simmons*, 543 U.S. 551, 568 (2005)). The Supreme Court “insists upon confining the instances in which the punishment can be imposed.” *Kennedy*, 554 U.S. at 420. The Court has recognized several categorical restrictions on the death penalty, including forbidding the execution of an offender who did not himself kill or intend to kill a victim, *Enmund v. Florida*, 458 U.S. 782, 788 (1982); and most recently, that executing juveniles and individuals who are intellectually disabled runs afoul of the Eighth

Amendment prohibition on cruel and unusual punishment. *Roper*, 543 U.S. at 578-79; *Atkins v. Virginia*, 536 U.S. 304, 321 (2002).

One of the primary factors underpinning the Supreme Court’s decisions restricting capital punishment for certain offenders is the consideration of the penological purposes served by the death penalty—“retribution and deterrence of capital crimes by prospective offenders.” *Gregg v. Georgia*, 428 U.S. 153, 183 (1976); *see also Roper*, 543 U.S. at 553; *Atkins*, 536 U.S. at 319. In *Atkins*, the Court held that the features of intellectual disability reduced the moral culpability of offenders and made them less likely to be deterred by the prospect of a death sentence. 536 U.S. at 318-20. In *Roper*, expressing many of the same considerations it noted in *Atkins*, the Supreme Court exempted juveniles from the death penalty because their “culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity.” *Roper*, 543 U.S. at 571.

To determine whether implementing the death penalty is a proportionate punishment for an offense or a group of offenders under the Eighth Amendment, in addition to considering the penological purposes of retribution and deterrence, the Supreme Court mandates consideration of “the evolving standards of decency that mark the progress of a maturing society.” *Atkins*, 536 U.S. at 311-12 (citing *Trop v. Dulles*, 356 U.S. 86, 100-01 (1958)); *see also Graham v. Florida*, 560 U.S. 48, 58 (2010); *Roper*, 543 U.S. at 561. In examining such evolving standards, the Court has often looked to various factors, including whether there is a national legislative or legal consensus against the application of capital punishment to the class of offenders and whether there is a broader social and professional consensus against executing individuals in that group. *Atkins*, 536 U.S. at 312; *Roper*, 543 U.S. at 564.

As noted by Justice Rucker, the same legal rationale for exempting the intellectually disabled from execution applies to the severely mentally ill. *Corcoran*, 774 N.E.2d at 502-503 (Rucker, J., dissenting). Individuals with severe mental illness—particularly those whose mental illness results in psychosis, like Corcoran—have many of the same features the Court found rendered the death penalty a disproportionate punishment for juveniles and those with intellectual disabilities. See Christopher Slobogin, *What Atkins Could Mean for People with Mental Illness*, 33 N.M. L. Rev. 293, 304 (2003). As the American Bar Association explained in their 2016 white paper, drawing a parallel to the impairments described by the Supreme Court in *Atkins*, “hallucinations, delusions, grossly disorganized thinking—among other symptoms of mental illness—also significantly interfere with an individual’s thinking, behavior, and emotion regulation.” American Bar Association, *Severe Mental Illness and the Death Penalty*, p, 3 (Dec. 2016).

https://www.americanbar.org/groups/crsj/projects/death_penalty_due_process_review_project/severe-mental-illness-initiative/ .

The Supreme Court specified that the ultimate question was not whether those groups of offenders knew right from wrong or were legally competent: “Mentally retarded persons frequently know the difference between right and wrong and are competent to stand trial.” *Atkins*, 536 U.S. at 318; see also *Roper*, 543 U.S. at 563. Rather, the impairments those offenders possess “make it less defensible to impose the death penalty as retribution for past crimes and less likely that the death penalty will have a real deterrent effect.” *Roper*, 543 U.S. at 563 (citing *Atkins*, 536 U.S. at 318-19). The similar impairments experienced by offenders with severe mental illness, particularly those like Corcoran, a person experiencing

hallucinations, delusions, and psychosis, likewise make the death penalty an unjust punishment for severely mentally ill defendants.

Moreover, a national consensus has emerged against executing the severely mentally ill. Every other contiguous death penalty state in this area of the Midwest has banned the death penalty for the seriously mentally ill. Many other states have introduced bills to ban the death penalty or execution for people with severe mental illness, including schizophrenia and schizoaffective disorder. There is a regional consensus clearly established in this area of the Midwest as well as an emerging national consensus to ban the death penalty for the seriously mentally ill.

In 2019, the Ohio legislature passed a similar pro-life law which went into effect in early 2021. Ohio's statute prohibits the imposition or implementation of the death penalty for defendants who have been diagnosed with a severe mental illness, such as schizophrenia or schizoaffective disorder, and whose mental illness "significantly impaired the person's capacity to exercise rational judgment in relation to the person's conduct" regarding conforming his or her conduct to the law or appreciating the nature, consequences, or wrongfulness of his or her conduct. Ohio Rev. Code §§ 2929.05 (A)(1)(a)(i) and (ii) (2019). The legislature specified that the offender's condition need not meet "the standard to be found not guilty by reason of insanity . . . or the standard to be found incompetent to stand trial." *Id.*

Kentucky followed in early 2022 with its pro-life law, exempting from the death penalty offenders with "active symptoms and a documented history, including a diagnosis," of one of the listed mental illnesses, including schizophrenia or schizoaffective disorder.

KRS §§ 532.130 (3)(a)(1) & (2) (2022). An offender found to fit those criteria “shall not be subject to execution.” KRS § 532.140.

The State of Indiana itself has recognized this consensus. In the recent death penalty case *State v. Dorsey*, Cause No. 49D32-2004-MR-013622, Marion County withdrew its request for the death penalty for a defendant who killed a police officer. The State explained that “The United States Constitution forbids the execution of mentally ill defendants.” Therefore, “After reviewing the psychiatric evaluations prepared by the Court-appointed doctors, the State has determined that Defendant is constitutionally ineligible to receive the death penalty.” *State’s Motion to Dismiss Request for Death Sentence, filed January 24, 2024* [Attached].

The Court has the power to review Corcoran’s death sentence due to changes in the law and Corcoran’s mental state. Constitutional concerns about the evolving standards of decency in executing a seriously mentally ill person need to be examined. The Court usually reviews and revises a criminal defendant’s sentence on the direct appeal of his conviction and sentence under Appellate Rule 7(B). However, the Court has reviewed and revised sentences in post-conviction or in a successor post-conviction when there are significant changes and failing to do so would work a manifest injustice.

There have been two significant changes since the Court upheld Corcoran’s death sentence in 2002. First, his mental state has declined significantly. Second, the power to review and revise sentences changed from prohibiting the Court from revising a sentence unless it was manifestly unreasonable to allowing the Court to revise a sentence that was inappropriate in light of the offense and the offender. Corcoran’s death sentence was previously reviewed to determine whether it was manifestly unreasonable, “an oppressive

standard” that risked “impinging criminal defendants’ constitutional right to appeal.” *State v. Stidham*, 157 N.E.3d 1185, 1193 (Ind. 2020). This Court’s laudable, more intensive review of a death sentence is part of what makes death sentences constitutional. *Saylor v. State*, 808 N.E.2d 646, 650 (Ind. 2004). The ‘fundamental respect for humanity underlying the Eighth Amendment’s prohibition against cruel and unusual punishment gives rise to a special ‘need for reliability in the determination that death is the appropriate punishment’ in any capital case.” *Johnson v. Mississippi*, 486 U.S. 578, 584 (1988). Art. I, § 16 of the Indiana Constitution “sweeps somewhat more broadly than the Eighth Amendment” and prohibits disproportionate sentences. *Knapp v. State*, 9 N.E.3d 1274, 1289 (Ind. 2014).

II. A Fifteen Year hiatus.

The State moved for a date after, at some point, most likely recently, acquiring drugs from some unknown source. While a secrecy statute is in place, the date should not be set until the State delivers the new protocol and affirms no state or federal laws were broken in obtaining the drugs. A secrecy statute cannot condone the illegal acquisition of controlled substances. There has been no disclosure regarding the amount of the drug in their possession, whether they are expired, or their potency and sterility. Thus, the State should provide the Court and Corcoran this information. This can and should be done in a manner that complies with the secrecy statute prior to this Court permitting the execution to proceed. This Court is responsible for setting the dates and is ultimately responsible that the execution is carried out legally, constitutionally and without incident.

Corcoran would note that he has filed grievances because The Indiana Department of Corrections is interfering with the Kairos program and Appellant's exercise of his religion pursuant to the Religious Land Use and Institutionalized Persons Act (RLUIPA). IDOC

and the State should affirm that they will stop these unconstitutional restraints, especially when they are trying to end his life. *Ramirez v. Collier*, 595 U.S. 411 (2022).

III. Conclusion

Substantial evidence was presented at the penalty phase, judicial sentencing and in post-conviction that Corcoran was suffering from delusions and hallucinations at the time of his trial and before the offenses. *See* Def.'s Pre-Sent. Memo. at 23 (Dr. Larry Davis, M.D.); TR 2729 (Dr. Philip Coons, M.D.); PC R. 13 (Dr. Kaplan, a clinical psychologist), 55 (Dr. George Parker, M.D.), 66 (Dr. Edmund Haskins, a neuropsychologist). Corcoran believes that the prison has an ultrasound machine it uses to torture him. PC R. at. 50; *see id.* at 12-13, 14; *id.* at 66. Corcoran hears sounds that he believes are being projected from this ultrasound machine, which he also thinks can broadcast his thoughts throughout the prison. *Id.* at 51. He believes that he can hear people talking about him through the walls of his cell. *Id.* Additionally, Corcoran holds a delusional belief he “speaks in his sleep and says embarrassing or provocative things that make people act in strange ways or perhaps hostile ways towards him. When that delusion is more intensive, he begins to believe that he . . . while awake . . . is essentially asleep and speaking involuntarily.” *Id.* at 49; *id.* at 66. There can be no question—and the State has previously conceded—that Corcoran is seriously mentally ill.

WHEREFORE, this Court should deny the request to set an execution date, order briefing and entertain argument to determine whether the execution of Corcoran in his present mental state violates current standards of decency in violation of Ind. Const. art. I, § 16 and the Eighth and Fourteenth Amendments to the United States Constitution. Additionally, the Court should allow time for Corcoran to investigate the legality and

efficacy of the drugs obtained by Indiana and the procedures by which it intends to carry out the execution.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been delivered through IEFS to the following, this 11th day of July, 2024.

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