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Cover Page Footnote

Kaleb Byars is a J.D. Candidate at the University of Tennessee College of Law (Class of 2021) and Editor-in-Chief of the Tennessee Law Review. He expresses sincere thanks to the staff of the Tennessee Journal of Race, Gender, and Social Justice for their assistance in finalizing this piece. This article has also been published in the Courts & Justice Law Journal.

MADISON V. ALABAMA: AN ANALYSIS AND FUTURE CONSIDERATIONS

*Kaleb Byars**

I. INTRODUCTION

In 1985, Vernon Madison killed a police officer in Alabama.¹ At trial, an Alabama jury convicted Madison of capital murder, and the trial court sentenced him to death.² While awaiting his execution, Madison suffered strokes and was diagnosed with several mental disorders, including vascular dementia.³ Madison averred these disorders, particularly vascular dementia, rendered him unable to remember committing his crime.⁴ Accordingly, Madison petitioned to stay his execution, arguing his disorders rendered him mentally incompetent.⁵ Particularly, Madison argued the inability to remember committing the murder prevented him from understanding his conviction.⁶

The State of Alabama opposed, and it argued even if Madison could not remember committing the murder, he nevertheless could understand the reason for his execution.⁷ Therefore, Alabama maintained that Madison's mere inability to remember committing the murder did not render him mentally incompetent.⁸ Further, the State argued prior Supreme Court decisions provided that the Eighth Amendment only bars execution of prisoners who suffer from delusions or psychotic disorders.⁹

The trial court held Madison was mentally competent and thus refused to stay his execution.¹⁰ The court noted Madison did not suffer from delusions, paranoia, or psychosis.¹¹ The court did not detail its finding of competence other than by stating the evidence did not support a

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¹ *Madison v. Alabama*, 139 S. Ct. 718, 723 (2019).

² *Id.*

³ *Id.*

⁴ *Id.* Madison's primary argument for staying his execution was that he suffered from vascular dementia. *Id.* Vascular dementia can result in memory loss, confusion, and disorientation. *Vascular Dementia*, ALZHEIMER'S ASS'N, <https://www.alz.org/alzheimers-dementia/what-is-dementia/types-of-dementia/vascular-dementia> (last visited Nov. 15, 2020).

⁵ *Madison*, 139 S. Ct. at 723.

⁶ *Id.*

⁷ *Id.* at 723–24.

⁸ *Id.* at 724.

⁹ *Id.* See generally *Panetti v. Quarterman*, 551 U.S. 930 (2007) (holding mentally ill prisoners may only be executed if they can develop a rational understanding of the reason for their sentences); *Ford v. Wainwright*, 477 U.S. 399 (1986) (holding executing mentally incompetent prisoners is unconstitutional). In *Ford* and *Panetti*, the Supreme Court did not clearly define when a prisoner's mental illness precludes a state from executing him. See *infra* Part II. The State of Alabama essentially argued only mental disorders which cause delusions or psychosis prevented execution. *Madison*, 139 S. Ct. at 724.

¹⁰ *Madison*, 139 S. Ct. at 724.

¹¹ *Id.*

finding that Madison was delusional.¹² In 2018, Alabama set Madison’s execution date, and Madison again argued his mental illness precluded his execution.¹³ Nevertheless, the trial court again found Madison mentally competent.¹⁴ The court reasoned that Madison failed to show that he suffered from “insanity.”¹⁵

Unsatisfied, Madison appealed directly to the Supreme Court.¹⁶ The Court stayed the execution and remanded the case to the trial court to determine whether Madison was mentally competent in light of its holding.¹⁷ The Court held a state may execute a prisoner who cannot recall committing the crime for which he is sentenced to death if the prisoner can rationally understand the reason for his execution.¹⁸

Part I of this Article has introduced the facts of *Madison v. Alabama* and its central holding. Next, Part II will address other Supreme Court jurisprudence on execution of mentally incompetent prisoners. Part III further discusses the Court’s holding in *Madison v. Alabama*. Part IV provides an analysis of the Court’s holding, specifically noting implications the Court failed to consider. Further, Part IV discusses other issues related to executing mentally ill prisoners that may arise following *Madison v. Alabama*. Part V briefly concludes.

II. THE DEVELOPMENT OF THE EIGHTH AMENDMENT’S RESTRICTION ON EXECUTING MENTAL INCOMPETENT PRISONERS

The Supreme Court only addressed the constitutionality of executing mentally incompetent prisoners on two occasions prior to *Madison v. Alabama*.¹⁹ First, in *Ford v. Wainwright*, the Court

¹² *Madison*, 139 S. Ct. at 724–25. Unsatisfied with the trial court’s finding, Madison filed a petition for habeas corpus with the United States Supreme Court. *Id.* at 725. Because this was a habeas corpus proceeding, the Supreme Court was generally required to defer to the trial court’s findings pursuant to the Antiterrorism and Effective Death Penalty Act (“AEDPA”). *Id.* Specifically, the AEDPA mandates that a higher court must affirm a trial court’s finding unless the petitioner shows a trial court’s finding “involved an unreasonable application of[] clearly established federal law.” *Id.* (quoting 28 U.S.C. § 2254(d) (1996)). The Court found the trial court had not erred in this manner and accordingly affirmed its finding. *Id.*

¹³ *Id.* at 725. Madison repeated his initial argument but indicated his mental condition had worsened. *Id.* He also argued the State’s expert’s testimony during the first hearing was invalid because the expert’s license had since been suspended. *Id.* Alabama also responded with its same arguments. *Id.* Specifically, the State reiterated that Madison did not suffer from any delusional or psychotic disorders. *Id.* at 725–26.

¹⁴ *Id.* at 726.

¹⁵ *Id.*

¹⁶ *Id.* Because this proceeding was a direct appeal of the trial court’s finding rather than a habeas corpus petition, the Supreme Court was not required to give any deference to the trial court’s finding. *Id.* (citing 28 U.S.C. § 2254(d) (1996)).

¹⁷ *Id.*

¹⁸ *Id.* at 728 (“[T]he sole inquiry for the court [is] whether the prisoner can rationally understand the reasons for his death sentence.”).

¹⁹ See generally *Panetti v. Quarterman*, 551 U.S. 930 (2007) (holding mentally ill prisoners may only be executed if they can develop a rational understanding of the reason for their sentences); *Ford v. Wainwright*, 477 U.S. 399 (1986) (holding executing mentally incompetent prisoners is unconstitutional). It is worth noting the issue addressed in this Article does not surface when a prisoner is mentally incompetent at the time he commits his crime so long as he is competent at the time of execution. See Katherine I. Puzone, *A Proposal to Allow the Presentation of Mitigation in Juvenile Court so that Juvenile Charges May Be Expunged in Appropriate Cases*, 36 PACE L. REV. 558, 560–61 (2016) (providing the M’Naughton Rule which prescribes a prisoner is only responsible for his offense when he understands

held executing mentally incompetent prisoners is unconstitutional.²⁰ Next, in *Panetti v. Quarterman*, the Court held a prisoner is mentally competent and thus eligible for execution if he can rationally understand the reason for his execution.²¹ Finally, in *Madison v. Alabama*, the Court held a prisoner who can rationally understand the reason for his execution may be executed even if he suffers from a mental illness which prevents him from remembering the crime for which he was sentenced to death.²²

In *Ford v. Wainwright*, the Supreme Court first addressed whether the Eighth Amendment prohibits executing mentally incompetent prisoners.²³ The Eighth Amendment precludes infliction of punishments deemed cruel and unusual when the Bill of Rights was ratified.²⁴ However, courts consider “evolving standards of decency” in a society when determining whether a punishment is cruel and unusual.²⁵ Thus, when considering whether a punishment violates the Eighth Amendment, a court must consider contemporary moral and societal values.²⁶

Several authorities have debated the morality of executing mentally incompetent prisoners.²⁷ Scholars initially questioned the decency of executing such prisoners at common law.²⁸ Blackstone suggested executing a mentally ill prisoner is inappropriate because the prisoner may have raised a valid defense preventing her execution had her mind been sound at the time of the execution.²⁹ Blackstone further suggested a prisoner who has had the misfortune of developing a mental disorder has already suffered sufficient punishment.³⁰ Therefore, Blackstone argued, executing such a prisoner is unnecessary.³¹ Similarly, Coke suggested executing a mentally incompetent prisoner is “inhuman[e],” “cruel[,]” and “a miserable spectacle.”³² Other scholars provide religious explanations for their disapproval of executing the mentally ill.³³ For example,

the difference between right and wrong or the nature of his offense *at the time of his offense*). Instead, this issue arises when a prisoner becomes incompetent only after being sentenced to death.

²⁰ 477 U.S. at 410.

²¹ 551 U.S. at 959–60.

²² 139 S. Ct. at 726. The Court also addressed whether a state may execute a prisoner who suffers from a mental disorder other than a delusional or psychotic disorder. *Id.* The Court held the specific mental disorder from which a prisoner suffers is irrelevant when determining whether he is mentally competent and thus eligible for execution. *Id.* at 728. Instead, the Court explained any mental disorder will preclude a prisoner’s execution if it prevents him from being able to rationally understand the reason for his execution. *Id.*

²³ 477 U.S. at 401. Justice Marshall wrote the majority opinion. *Id.* Like Vernon Madison, Alvin Ford faced the death penalty after shooting and killing a police officer. *Ford v. Wainwright*, 752 F.2d 526, 526 (11th Cir. 1985), *rev’d*, 477 U.S. 399 (1986).

²⁴ *Ford*, 477 U.S. at 405–06 (citing *Solem v. Helm*, 463 U.S. 277, 285–86 (1983))

²⁵ *Id.* at 406 (quoting *Trop v. Dulles*, 356 U.S. 86, 101 (1958)).

²⁶ *Id.*

²⁷ See 4 WILLIAM BLACKSTONE, COMMENTARIES *24–25; E. Coke, 3 INSTITUTES 6 (6th Ed. 1680); John Hawles, *Remarks on the Trial of Mr. Charles Bateman*, in A COMPLETE COLLECTION OF STATE TRIALS AND PROCEEDINGS FOR HIGH TREASON AND OTHER CRIMES AND MISDEMEANORS 474, 477 (Thomas Bayly Howell ed., 1685); Rochelle Graff Salguero, Note, *Medical Ethics and Competency to Be Executed*, 96 YALE L. J. 167 (1986). Pamela A. Wilkins, *Competency for Execution: The Implications of a Communicative Model of Retribution*, 76 TENN. L. REV. 713 (2009).

²⁸ *Ford*, 477 U.S. at 406.

²⁹ *Id.* at 407 (quoting 4 WILLIAM BLACKSTONE, COMMENTARIES *24–25).

³⁰ *Id.* at 407–08.

³¹ *Id.*

³² *Id.* at 407.

³³ *Id.*

one academic suggests executing mentally incompetent prisoners is immoral because mentally incompetent prisoners cannot understand death is impending and therefore cannot prepare for the afterlife.³⁴

The traditional view against executing mentally ill prisoners continues today.³⁵ Several modern scholars suggest executing mentally incompetent prisoners has no retributive value.³⁶ One argument suggests the retributive weight produced by executing a mentally incompetent prisoner is not sufficiently cumbersome to counterbalance the overwhelming encumbrance caused by the crime that prisoner committed.³⁷ Another argument suggests retribution requires a prisoner to understand his moral culpability prior to his execution.³⁸ Because a mentally incompetent prisoner cannot develop this understanding, retribution is not served when he is executed.³⁹ Moreover, prior to *Ford*, states had discretion to decide whether to execute mentally incompetent prisoners.⁴⁰ Despite this discretion, no state permitted executing mentally ill prisoners.⁴¹

In light of these common law and modern views, the Supreme Court in *Ford* held, “The Eighth Amendment prohibits [a] state from inflicting the penalty of death upon a prisoner who is *insane*.”⁴² The Court reasoned retribution is not served when a state executes a prisoner who cannot understand the reason for his execution.⁴³ In his concurring opinion, Justice Powell described when executing a mentally ill prisoner is unconstitutional.⁴⁴ Particularly, Justice Powell suggested the Eighth Amendment precludes executing “only . . . those who are unaware of the punishment they are about to suffer and why they are about to suffer it.”⁴⁵ This suggestion paved the way for the Court in future opinions to provide the standard for when a prisoner’s mental illness precludes his execution.

Next, in *Panetti v. Quarterman*, the Supreme Court addressed whether the Eighth Amendment prohibits executing a prisoner whose mental illness prevents him from understanding the reason for his execution.⁴⁶ Before *Panetti* reached the Supreme Court, the Fifth Circuit heard

³⁴ *Ford*, 477 U.S., at 407.

³⁵ *Id.* at 408. *See generally* *Atkins v. Virginia*, 536 U.S. 304 (2002) (holding executing mentally impaired persons violates the Eighth Amendment).

³⁶ *Ford*, 477 U.S. at 408.

³⁷ *Id.*; *see also* Note, *Insanity of the Condemned*, 88 YALE L. J. 533, 536 (1979) (providing that retribution is not served when an insane prisoner is executed because an insane prisoner’s life is unequal to the life of a person who has no mental illness).

³⁸ Salguero, *supra* note 27, at 167 n.5.

³⁹ *Id.* Others suggest retribution is achieved only when a prisoner “suffer[s] for the pain that they have caused” Angela M. Kimber, Comment, *Psychotic Journeys of the Green Mile*, 22 T.M. COOLEY L. REV. 27, 51 (2005).

⁴⁰ 477 U.S. at 408; *see* *United States ex rel. Smith v. Baldi*, 344 U.S. 561, 568–69 (1953) (deferring to prior Pennsylvania Supreme Court decision which prohibited execution of mentally incompetent prisoners).

⁴¹ *Ford*, 477 U.S. at 408.

⁴² *Id.* at 410 (emphasis added). Ford uses the term “insane” to encompass all mentally incompetent prisoners. *Id.* at 401. *Panetti* and *Madison* specify when the Eighth Amendment prohibits execution of prisoners with mental illnesses. *See* *Panetti v. Quarterman*, 551 U.S. 930 (2007); *see also infra* Part III.

⁴³ *Ford*, 399 U.S. at 409.

⁴⁴ *Id.* at 422 (Powell, J., concurring).

⁴⁵ *Id.* (Powell, J., concurring). Justice Powell reasoned retribution only exists when a prisoner understands the relationship between his crime and his execution. *Id.* (Powell, J., concurring).

⁴⁶ 551 U.S. 930, 959 (2007). The facts of *Panetti* are interesting. Scott Panetti forcibly entered his wife’s parents’ house. *Id.* at 935. Panetti killed his wife’s parents while his wife and daughter watched. *Id.* Panetti then held his wife

the case.⁴⁷ The Fifth Circuit interpreted *Ford* to establish that the Eighth Amendment allows a prisoner to be executed if he can understand “that he [is] going to be executed and why he [is] going to be executed.”⁴⁸ Most importantly, the Fifth Circuit implied that a prisoner’s mere awareness of a state’s given reason for seeking his execution is sufficient to satisfy this standard.⁴⁹

On appeal, the Supreme Court considered the majority opinion and Powell’s concurrence in *Ford*.⁵⁰ The Court concluded that the Fifth Circuit had incorrectly interpreted *Ford*.⁵¹ Most importantly, the Court stated, “A prisoner’s awareness of [a] state’s rationale for [his] execution is not the same a *rational understanding* of it.”⁵² Thus, the Court clarified a prisoner’s mere awareness of the state’s reason for seeking his execution is not sufficient for the prisoner to be mentally competent.⁵³ Instead, the Court explained prisoners must be able to rationally understand the reason for their execution.⁵⁴ Consequently, *Panetti* clarified that a prisoner is mentally incompetent and thus exempted from execution only when he suffers from a mental disability which prevents him from rationally understanding the reason for his execution.⁵⁵

Finally, the Court prescribed that courts should consider delusions caused by mental illnesses when determining whether prisoners can rationally understand the reason for their executions.⁵⁶ The Court explained delusions may prevent prisoners from identifying the

and daughter hostage before later surrendering. *Id.* at 935–36. A jury sentenced Panetti to death for capital murder. *Id.* at 937.

Later, Panetti sought to stay his execution, arguing he developed a mental illness which rendered him unable to understand the reason for his execution. *Id.* at 938. Panetti recognized the State’s official reason for seeking his execution was that he committed capital murder. *Id.* at 954–55. However, Panetti believed the State truly sought his execution to prevent him from preaching. *Id.*

⁴⁷ See *Panetti v. Dretke*, 448 F.3d 815 (5th Cir. 2006), *rev’d*, 551 U.S. 930 (2007).

⁴⁸ *Id.* at 819 (quoting *Barnard v. Collins*, 13 F.3d 871, 877 (5th Cir. 1994)).

⁴⁹ *Panetti*, 551 U.S. at 956. Thus, the Fifth Circuit concluded Panetti could be executed because he knew: (1) he committed the murders, (2) he would be executed, and (3) the State’s reason for execution was the murders. *Id.*

⁵⁰ *Id.* at 957.

⁵¹ *Id.* at 959.

⁵² *Id.* (emphasis added). The Court recognized “rational understanding” is an ambiguous term but failed to set a clear standard to determine when a rational understanding exists. *Id.* The Court merely stated there will be cases where some prisoners will lack a rational understanding of their punishments even where they do not suffer from mental illness. *Id.*

The Court remanded the case back to the trial court because the trial court did not consider Panetti’s assertion that his mental illness prevented him from understanding the “meaning and purpose of” his impending execution. *Id.* at 960.

⁵³ *Id.* at 959.

⁵⁴ *Id.* at 959–60. While not explicitly stated, the Court implied a prisoner must understand that the state’s provided reason for seeking execution is the actual reason for his execution. For example, for Panetti to have had a rational understanding of the reason for his execution, he would have needed to recognize that he was truly being executed for the murders, which is markedly different from recognizing that the State claimed it sought his execution because of the murders. *Id.*

Justice Thomas dissented primarily on procedural grounds. See *Id.* at 962–81 (Thomas, J., dissenting). However, Justice Thomas asserted the majority unwarrantedly expanded *Ford*. *Id.* at 979–80 (Thomas, J., dissenting). Justice Thomas reasoned *Ford* only required a prisoner to be aware of the state’s reason for seeking his execution. *Id.* at 980–81 (Thomas, J., dissenting).

⁵⁵ *Id.* at 959–60.

⁵⁶ *Id.* at 960.

connection between their crime and execution.⁵⁷ However, while *Panetti* provided some insight as to when a prisoner's mental illness precludes his execution, uncertainty with the meaning of "rational understanding" demanded that the Supreme Court re-address the issue in *Madison v. Alabama*.⁵⁸

III. A STATE MAY EXECUTE A PRISONER WHOSE MENTAL ILLNESS RENDERS HIM UNABLE TO RECALL COMMITTING THE CRIME FOR WHICH HE WAS SENTENCED IF THE PRISONER CAN RATIONALLY UNDERSTAND THE REASON FOR HIS EXECUTION.

In *Madison v. Alabama*, the Supreme Court held a state may constitutionally execute prisoners whose mental illnesses prevents them from remembering their crime if they can rationally understand the reason for their executions.⁵⁹ The Court reasoned a prisoner does not necessarily need to recall the facts of her crime to understand the reason for her execution.⁶⁰

Justice Kagan authored the majority opinion and first considered a hypothetical prisoner who suffers from memory loss which creates a "black hole" where the memory of his crime should exist.⁶¹ Justice Kagan assumed the prisoner has no further cognitive impairment which could cause distortion of the prisoner's understanding of crime and punishment.⁶² The Court concluded this type of memory loss alone would not prevent the prisoner from developing a rational understanding of the reason for his execution.⁶³

Justice Kagan analogized this hypothetical prisoner to a present-day citizen who has learned about the Civil War.⁶⁴ Justice Kagan suggested the prisoner and the present-day citizen are similar in that neither can recall a certain event from memory.⁶⁵ However, while the present-day citizen cannot recall the Civil War from memory (because she did not personally experience it),

⁵⁷ *Panetti*, 551 U.S. at 960. The Court continuously implied *Panetti*'s delusions prevented him from understanding the reason for his execution. *Id.* at 936 (*Panetti*'s psychiatric evaluations suggested he suffered from delusions); *id.* at 954–55 (describing *Panetti*'s delusions); *id.* at 956 ("There is . . . much in the record to support the conclusion that the petitioner suffers from severe delusions The legal inquiry concerns whether these delusions can be said to render him incompetent."); *id.* at 958–59 (explaining that the Fifth Circuit improperly ignored how a prisoner's delusions may prevent him from understanding why he is being executed); *id.* at 960 ("Gross delusions stemming from a severe mental disorder may put an awareness of a link between a crime and its punishment in a context so far removed from reality that the punishment can serve no proper purpose."). This is important because the Court in *Madison* held the specific mental disorder from which a prisoner suffers is irrelevant. *See supra* note 22 and accompanying text. Instead, a mentally ill prisoner may be executed if he can develop a rational understanding of the reason for his death sentence irrespective of his specific mental illness. *Id.*

⁵⁸ *See Ferguson v. Sec'y, Fla. Dep't of Corr.*, 716 F.3d 1315, 1318 (11th Cir. 2013) ("The bottom line of the *Panetti* decision is that there is not yet a well-defined bottom line in this area of the law."); *Simon v. McCarty*, No. 2:11-CV-111-SA, 2014 U.S. Dist. LEXIS 176074, at *7 (N.D. Miss. Dec. 22, 2014) ("The Supreme Court has declined to establish a rule governing all competency determinations, and it has declined to set the parameters of what a "rational understanding" requires") (quoting *Panetti*, 551 U.S. at 958); *see also, e.g., State v. Irick*, 320 S.W.3d 284, 295 (Tenn. 2010) (holding that a prisoner does not have a rational understanding if he questions "the reality of [his] crime or the reality of his punishment").

⁵⁹ 139 S. Ct. at 726.

⁶⁰ *Id.* at 727.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

she can nevertheless recognize the Civil War indeed occurred and that it had certain consequences.⁶⁶ Likewise, Justice Kagan analogized, a prisoner who forgets his crime can nevertheless understand the crime indeed occurred and that certain consequences and moral culpability follow it.⁶⁷ Thus, a prisoner can rationally understand the reason for his execution without remembering the facts of his crime.⁶⁸ Consequently, the Court concluded the Eighth Amendment does not bar execution of a prisoner who suffers from mere memory loss without further cognitive impairment.⁶⁹ Instead, the Court held the ability to develop a rational understanding is the sole requirement for execution of the mentally ill to be constitutional.⁷⁰

The Court recognized its holding as consistent with *Ford* and *Panetti*.⁷¹ For example, *Ford* suggested executing mentally ill prisoners “simply offends humanity.”⁷² However, Justice Kagan explained an execution does not offend humanity when the prisoner only suffers from temporary memory loss.⁷³ Likewise, *Panetti* asserted retribution requires a prisoner to understand his moral culpability.⁷⁴ However, as aforementioned, a prisoner can understand his moral culpability even if he cannot recall the facts of his crime.⁷⁵

While the Court concluded that memory loss alone does not preclude the rational understanding required for execution, Justice Kagan cautioned that courts should nevertheless consider a prisoner’s memory loss.⁷⁶ Specifically, the Court stated if memory loss combines with other cognitive impairments to prevent a prisoner from comprehending the reason for his execution, then execution is not constitutional.⁷⁷ For example, Justice Kagan explained if a prisoner’s memory loss is so pervasive that the prisoner cannot acquire knowledge at all, that prisoner cannot possibly rationally understand the reason for his execution.⁷⁸ Similarly, if memory loss disables a prisoner’s knowledge of morality, crime, or punishment, that prisoner may not be able to understand the reason for his punishment.⁷⁹ In conclusion, Justice Kagan emphasized, “[T]he sole inquiry for [a] court remains whether the prisoner can rationally understand the reasons for his death sentence.”⁸⁰

⁶⁶ 139 S. Ct. at 727. To provide another example, the Court stated individuals may or may not remember their first day of school; however, if they were later informed an event happened on that day, they could appreciate that the event actually occurred. *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.* Again, this analogy assumes the prisoner’s awareness of moral responsibility has not been affected. *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.* at 728.

⁷¹ *Id.* at 727.

⁷² *Ford v. Wainwright*, 477 U.S. 399, 407 (1986).

⁷³ *Madison*, 139 S. Ct. at 727.

⁷⁴ *Panetti v. Quarterman*, 551 U.S. 930, 958–59 (2007).

⁷⁵ *Madison*, 139 S. Ct. at 727.

⁷⁶ *Id.*

⁷⁷ *Id.* at 727–28.

⁷⁸ *Id.* at 728.

⁷⁹ *Id.*

⁸⁰ *Id.* The Court in *Panetti* suggested *Panetti*’s delusions prevented him from understanding the reason for his execution. *Panetti v. Quarterman*, 551 U.S. 930, 936, 954–56, 958–60 (2007). In *Madison*, the trial court determined *Madison* was competent to be executed, continuously stating *Madison* did not suffer from any psychosis or delusions. 139 S. Ct. at 730–31. Because of these statements, the majority in *Madison* questioned whether the trial court

IV. ANALYSIS AND IMPLICATIONS OF MADISON V. ALABAMA

In *Madison*, the Court held steadfast to the notion that a state may only constitutionally execute a prisoner if she can rationally understand the reason for her execution.⁸¹ The Court specified a prisoner's inability to recall her crime does not necessarily render her execution unconstitutional because the prisoner may still be able to rationally understand the reason for her execution.⁸² This Part first analyzes the Court's reasoning, and then it considers issues the Court failed to address.

A. Analysis of the Court's Reasoning in Madison v. Alabama

There are several reasons the Court's holding is sensible. First, a prisoner who understands morality, crime, and punishment should indeed be able to understand that his crime resulted in his punishment even if he cannot remember committing his crime. For instance, consider a prisoner who knows committing capital murder results in the death penalty and that he committed capital murder. Such a prisoner should be able to do the proverbial math and conclude his death sentence resulted from his capital murder, regardless whether he remembers committing the murder. Conversely, though, if a prisoner's mental illness causes him to believe he did not commit the murder or that his execution is truly for a reason collateral to his crime, then that prisoner could not possibly understand the true reason for his execution.⁸³

Additionally, the Court's holding appropriately prevents prisoners from claiming they cannot remember their crime simply to avoid execution. Had the Court held a prisoner's mere inability to remember her crime exempts her from execution, many prisoners would likely suddenly "forget" their offenses. After all, it would be impossible for others to ascertain whether the prisoner actually lost his memory. Consequently, prisoners would have an incentive to claim

erroneously interpreted *Panetti* to mandate that only prisoners suffering from delusional or psychotic disorders could not be constitutionally executed. 139 S. Ct. at 730–31. Accordingly, the Court was concerned the trial court found Madison competent to be executed because vascular dementia is not a delusional disorder. *Id.* Instead, the trial court's determination should have been based solely on whether Madison could develop a rational understanding of the reason for his execution irrespective of his memory loss or the particular mental disorder from which he suffered. *Id.* at 731. Accordingly, the Court remanded the case to the trial court to determine whether Madison was competent in light of its holding *Id.*

Justice Alito dissented on procedural grounds regarding the issue of whether only delusional or psychotic mental disorders preclude execution. *Id.* at 731, 734 (Alito, J., dissenting). Particularly, Justice Alito asserted the Court should not have heard that issue because Madison only raised the memory loss issue in the original petition. *Id.* at 731–32 (Alito, J., dissenting). The dissent concluded because Supreme Court rules mandate that the Court only hear issues raised in the initial petition, the Court should not have decided whether only certain mental disorders preclude execution. *Id.* at 732 (Alito, J., dissenting).

The dissent also argued even if the Court should have heard that issue, there was no reason to believe the lower court erroneously interpreted and relied on *Panetti*. *Id.* at 734 (Alito, J., dissenting). Thus, based solely on the memory loss issue, the dissent would have held that the trial court did not err in finding Madison mentally competent. *Id.* at 738 (Alito, J., dissenting).

⁸¹ *Madison*, 139 S. Ct. at 726.

⁸² *Id.* This Part does not necessarily represent the author's personal opinion on capital punishment. Instead, this section merely provides an objective legal analysis of the arguments the Court considered and failed to consider.

⁸³ For instance, *Panetti*'s delusion that the State sentenced him to death to prevent him from preaching could have hindered his understanding that the true reason for his execution was actually his capital murders. *Panetti*, 551 U.S. at 954–95.

they can no longer recall their crimes simply to avoid death. Fortunately, the Court forbade that possibility with its decision.

On the other hand, the Court's decision in *Madison* suffers a few inadequacies. A foundational principle of criminal law provides it is better to let a guilty prisoner go free than to imprison an innocent person.⁸⁴ Perhaps executing a prisoner who cannot remember his crime is analogous to executing an innocent person. As stated above, a prisoner should generally understand the reason for his execution if he knows he committed a capital crime and understands the corresponding punishment is death. Arguably, though, a prisoner's inability to remember his crime lowers his moral culpability. After all, one who remembers the intricate details of his atrocious crime can likely better appreciate his moral culpability than one who was merely told of those details.

To continue with Justice Kagan's analogy, there is no doubt present-day citizens can appreciate and understand the facts and consequences of the Civil War.⁸⁵ However, it seems unwise to presume a present-day citizen can appreciate the vivid details of the Civil War better than a soldier who experienced the War himself. Perhaps, then, a prisoner who cannot remember his crime has reduced moral culpability and should therefore be able to avoid execution.

The Court's opinion also improperly assumes retribution is not served when a state executes a prisoner who cannot rationally understand the reason for his execution.⁸⁶ Generally, retribution is the theory of punishment which suggests criminals deserve to be punished to counterbalance against the harm they caused.⁸⁷ The Court implies the fact that a prisoner suffers from a mental illness itself serves as sufficient retribution for the capital crime he committed and thus executing that prisoner has no retributive value.⁸⁸ This assertion suggests the impact of suffering from a mental illness is equivalent to the impact caused by the prisoner's crime. Therefore, this assertion is insupportable.

Arguably, executing a prisoner who committed a capital murder is the only way to achieve retribution for his crime. While there is no doubt that mental illness is a severe ailment, it, unlike death, is at least remediable in some instances. Further, an insane prisoner has the fortune of experiencing life (albeit perhaps a life with less enjoyment).⁸⁹ However, a victim of capital murder does not have the luxury of experiencing any quality of life.

Setting retribution aside, the Court failed to address other purposes served by executing a prisoner who cannot remember his crime. Several modern theories of punishment support executing such prisoners. First, the incapacitation theory of punishment suggests criminals should

⁸⁴ Daniel Epps, *The Consequences of Error in Criminal Justice*, 128 HARV. L. REV. 1065, 1067 (2015) (quoting 4 WILLIAM BLACKSTONE, COMMENTARIES *352).

⁸⁵ *Madison*, 139 S. Ct. at 727.

⁸⁶ *Id.* The Court acquired this reasoning primarily from *Ford* and *Panetti*. *Panetti*, 551 U.S. at 930; *Ford v. Wainwright*, 477 U.S. 399, 407 (1986).

⁸⁷ Melissa Ballengee Alexander, *Denying the DYAD: How Criminalizing Pregnant Drug Use Harms the Baby, Taxpayers, and Vulnerable Women*, 82 TENN. L. REV. 745, 786 (2015).

⁸⁸ The Court did not directly proclaim this, but it relied on *Ford*'s discussion of retribution and executing the mentally ill. *Madison*, 139 S. Ct. at 722 (citing *Ford*, 477 U.S. at 407 (“[M]adness is its own punishment”)) (quoting 4 WILLIAM BLACKSTONE, COMMENTARIES *395)).

⁸⁹ Conversely, one may argue life with a severe mental illness is no life at all.

be incapacitated to protect society from future crimes those criminals commit.⁹⁰ Executing a prisoner certainly prevents him from committing future crimes at society's expense.

Likewise, execution deters individuals from committing capital crimes even where the prisoner who is executed cannot remember his crime. The deterrence theory of punishment suggests punishment should deter both the criminal who commits a given crime and others from committing that crime.⁹¹ Obviously, after a prisoner is executed, she cannot commit another crime. Therefore, execution inevitably deters her from repeating his offense. Moreover, the hefty threat of death certainly forces others to contemplate before committing a capital crime.⁹² Therefore, it follows that execution of a prisoner, even of one who cannot remember committing his crime, serves the deterrence theory of punishment.⁹³

B. Related Issues Madison v. Alabama Failed to Address

While *Madison* clarified most of the uncertainty associated with *Ford* and *Panetti*,⁹⁴ several issues associated with executing mentally incompetent prisoners remain unresolved. In *Panetti*, the Court stated, “[S]ome prisoners, whose cases are not implicated by this decision, will fail to understand why they are to be punished on account of reasons other than those stemming from a severe mental illness.”⁹⁵ This statement suggests the rational understanding calculus does not apply to execution of prisoners who are not mentally ill but nonetheless cannot rationally understand the reason for their execution. However, the Court in *Madison* did not definitively answer whether a state may execute such prisoners. Consequently, it remains unclear whether such executions are constitutional.

Additionally, the Supreme Court has not yet answered whether a state may medically induce mental competence in prisoners who suffer from a mental illness which prevents them from rationally understanding the reason for their execution.⁹⁶ While the Supreme Court has never addressed this issue, the Eighth Circuit addressed it in *Singleton v. Norris*.⁹⁷ The Eighth Circuit held, “A State does not violate the Eighth Amendment as interpreted by *Ford*, when it executes a prisoner who . . . regained his competency through [administration of antipsychotic drugs].”⁹⁸ The Eighth Circuit reasoned *Ford* and *Panetti* only prohibit the execution of prisoners who are unaware

⁹⁰ Alexander, *supra* note 87, at 781–82.

⁹¹ Leslie Yalof Garfield, *A More Principled Approach to Criminalizing Negligence, a Prescription for the Legislature*, 65 TENN. L. REV. 875, 880–81 (1998).

⁹² *See id.* at 883.

⁹³ Of course, admittedly, execution ignores the rehabilitation theory of punishment as after a prisoner is executed, there is obviously no possibility for rehabilitation.

⁹⁴ *Madison v. Alabama*, 139 S. Ct. 718, 727 (2019).

⁹⁵ *Panetti v. Quarterman*, 551 U.S. 930, 959 (2007).

⁹⁶ *See* Lyn Suzanne Entzeroth, *The Illusion of Sanity: The Constitutional and Moral Danger of Medicating Condemned Prisoners in Order to Execute Them*, 76 TENN. L. REV. 641, 649. In *Washington v. Harper*, one of the first cases discussing forced administration of medicine on the mentally ill, the Court held states may administer antipsychotic drugs to some mentally ill prisoners for safety purposes and because forced drug administration serves some prisoners' own interest. 494 U.S. 210, 225–27 (1990).

⁹⁷ 319 F.3d 1018, 1027 (8th Cir. 2003).

⁹⁸ *Id.*

they will be executed.⁹⁹ However, a prisoner who has medically induced competence can reach such awareness.¹⁰⁰ The Sixth Circuit dodged this issue in *Thompson v. Bell*.¹⁰¹ In light of *Madison* and lower courts' lack of unanimity, this issue is ripe for the Supreme Court to address.¹⁰²

Finally, *Madison* invokes the broad policy question of whether a prisoner should be able to avoid execution merely because an extensive delay in his execution permitted him time to develop a mental illness. The average time between sentencing and execution in the United States is about 186 months.¹⁰³ If states performed executions more swiftly, fewer prisoners would develop mental illnesses that prevent their executions. It seems unfair that some prisoners can avoid their death sentences while other prisoners are executed simply due to these extensive delays.

To illustrate, consider two prisoners (A and B) who face capital punishment for identical crimes. After 100 months of awaiting execution, Prisoner A develops a mental illness that renders him mentally incompetent. Meanwhile, Prisoner B remains mentally competent. After 150 months, the date for each prisoner's execution arrives. However, only Prisoner B receives execution because Prisoner A's mental disorder precluded his execution. Thus, Prisoner A circumvents execution merely because he "luckily" developed a mental illness while Prisoner B "unfortunately" remained mentally competent. This result is counterintuitive, and it encourages prisoners to misrepresent that they suffer from mental illnesses simply to avoid execution.

V. CONCLUSION

In *Madison v. Alabama*, the Court elaborated on the unclear precedent set forth in *Ford* and *Panetti*. Considering common law and modern sentiment towards executing mentally ill prisoners, the Court expanded the scope of the rational understanding requirement set forth in *Panetti*. Particularly, the Court held that a state may constitutionally execute a mentally ill prisoner even if he does not remember the crime that earned him his death sentence if he can develop a rational understanding of the reason for his execution. Additionally, the Court provided guidance as to when a prisoner is able to develop such rational understanding. Only time will tell whether

⁹⁹ 319 F.3d at 1027.

¹⁰⁰ *Id.*

¹⁰¹ 580 F.3d 423, 441 (6th Cir.) (“[T]his Court will leave the question of whether executing [prisoners made competent by forced drug administration] constitutes cruel and unusual punishment for another day . . .”).

¹⁰² In *Sell v. United States*, the Supreme Court addressed a similar question. 539 U.S. 166, 179 (2003). More specifically, the Court held a state may constitutionally medically induce competence in some criminal defendants in order to render them competent to stand trial. *Id.*

Therefore, the Court would likely deem forced drug administration in these cases constitutional given the rulings in *Washington*, *Sell* and *Singleton*. This is especially true considering the Court in *Madison* stated, “[T]he sole inquiry for [a] court remains whether [a] prisoner can rationally understand the reason for his death sentence.” *Madison*, 139 S. Ct. at 728. This statement suggests it is irrelevant how a prisoner attains competence so long as he can attain the requisite rational understanding. On the other hand, safety concerns based on general prison environments addressed in *Washington* are not present where a prisoner is administered drugs simply to induce competency for execution.

¹⁰³ U.S. DEP’T OF JUSTICE: BUREAU OF JUSTICE STATISTICS, CAPITAL PUNISHMENT, 2013 – STATISTICAL TABLES 14 (2014). The 2013 Bureau of Justice Statistics Report is the most recent report which provides the average time between sentencing and execution.

the Court will extend its rational understanding analysis to other intricate issues associated with executing mentally ill prisoners.