ORIGINAL

DEATH PENALTY CASE
EXECUTION DATE AUGUST 5, 2025
Case No. M2000-00641-SC-DPE-CD

IN THE TENNESSEE SUPREME COURT
AT NASHVILLE

BYRON BLACK,
Appellant,

v.

STATE OF TENNESSEE,
Appellee.

Competency to be Executed Claim
Pursuant to *Van Tran v. State*
Davidson County Criminal Court Case No. 88-S-1479

APPELLANT'S REPLY TO STATE'S BRIEF

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INTRODUCTION

Nowhere in its brief does the State grapple with the fundamental fact that *Van Tran* created a procedure for a prisoner "to assert his or her *common* law and constitutional right to challenge competency to be executed." *Van Tran v. State*, 6 S.W.3d 257, 265 (Tenn. 1999) (emphasis added). Rather than addressing *Van Tran*'s clear embrace of common law claims, the State makes three arguments: one procedural, one substantive, and one disingenuous. For the reasons articulated below, none of these arguments are availing and this case should be remanded to the trial court for consideration of Mr. Black's claim.

I. The State's argument that Mr. Black's claim is procedurally barred is meritless and inconsistent with *Van Tran*.

The State asserts that Mr. Black's "idiocy" claim is untimely. The State both maintains that Mr. Black's claim should have been brought earlier because some of his multiple impairments have existed since birth and that competency to be executed proceedings *only* pertain to individuals who have lost sanity after sentencing. *See* State's Response at 29–31 (emphasizing "[t]he *Van Tran* inquiry looks only to whether a prison lost his sanity after sentencing.").[1]

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[1] Common law authorities recognized a finding of incompetency had different effects depending upon when the incompetence was shown. "And if such person after his plea, and before his trial, become of non sane memory, he shall not be tried; or, if after his trial he become of non sane memory, he shall not receive judgment; or if after judgment he become of non sane memory, his execution shall be spared." Matthew Hale, *History of Pleas of the Crown* 35 (1736).

This argument ignores *Van Tran* and *Ford*'s commandment that competency claims are properly presented only once execution is "imminent." *Van Tran v. State*, 6 S.W.3d 257, 263 (Tenn. 1999); *see Ford v. Wainwright*, 477 U.S. 399, 429 (1986) (O'Connor, J., concurring). The State argues that Mr. Black needed to bring an unripe "idiocy" claim at a prior proceeding to prohibit his execution at an uncertain future date. *See* State's Response at 31 (arguing Black "could and should have raised this waived claim long ago."). Not only would such a structure be inefficient, but it is also wholly contrary to *Van Tran*.

The State's argument implies that Mr. Black should have asserted his "idiocy" claim as part of pre-trial competency proceedings. State's Response at 31 (asserting claim should have been raised "long ago" and discussing limits to trial court jurisdiction following finality of a judgment).[2] While it is true that Mr. Black could have asserted *components* of his "idiocy" pre-trial, nothing in this Court's jurisprudence nor that of the Supreme Court's establishes a rule that by failing to assert

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[2] Neither this Court nor Tennessee statutes have articulated any such procedural rule and any imposition of a purported "default" would be invalid. *See, e.g., Walker v. Martin*, 562 U.S. 307, 320 (2011) (noting that procedural rules may not create a "novel and unforeseeable requirement[] without fair or substantial support in prior state law"); *Ford v. Georgia*, 498 U.S. 411, 424 (1991) (holding that state procedural default rules must be "firmly established and regularly followed" and parties must be aware of their existence) (cleaned up).

a pre-trial competency claim, a prisoner is foreclosed from later asserting a competency to be executed claim.[3] This argument is wholly unavailing.

The State further asserts that because Mr. Black's low intellectual functioning existed since birth—or at least early childhood—it is not cognizable in a *Van Tran* proceeding.[4] This fundamentally misapprehends Mr. Black's argument. While Mr. Black's low intellectual functioning is undoubtedly part of his "idiocy" claim, what renders him incompetent is the synergistic effect of low intellectual functioning coupled with unsound memory, an inability to manage his affairs, and pervasive brain damage. As was demonstrated in his opening brief, Mr. Black's dementia and memory loss afflicted him after his sentence was imposed and he has experienced significant recent declines in his neurocognitive functioning. *Compare* TR 56–68 (Martell 2025) *with* TR 428–39 (Martell 2021). Likewise, Mr. Black's degenerative brain

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[3] While Mr. Black's intellectual disability was manifest at the time of trial, other components of his "idiocy" were not. That is, although his history indicates that Mr. Black was already brain injured, the nature of Traumatic Brain Injury (TBI) is that the damage is progressive as the brain hyper-functions and thereby wears itself out over time—causing death and erosion of brain tissue. *See* generally TR 94–99 (Gur 2025). While TBI may be a component of the etiology of Mr. Black's dementia, he was not demented pretrial. It was not until 2025 that Mr. Black met the clinical definitions for major cognitive disorder (*see* TR 111–12 (Baecht 2025)) and received a diagnosis of dementia. TR 63 (Martell 2025).

[4] The State appears to have abandoned its prior position that Mr. Black's intellectual deficits did not manifest as a child. *Compare* State's Response at 31 *with Black v. State*, M2004-CCA-R3-PD, at 23–25 (Tenn. May 12, 2005) (Brief of the State of Tennessee) (arguing the proof at the hearing did not establish an IQ score below 70 prior to age 18 or that adaptive deficits manifested prior to age 18).

condition was objectively shown to have worsened between 2001 when imaging was first conducted and 2022 when subsequent imaging was conducted. TR 94–99 (Gur 2025). Even supposing the State is correct that a prisoner must show post-conviction declines to assert a cognizable competency claim, Mr. Black has done so in this case.[5]

II. The State's substantive argument is unavailing: a common law claim does not "flout" precedent.

In its Response, the State attempts to resolve the inquiry before the Court solely with reference to the *Panetti* "Cognitive Test." That is, the State argues that because Mr. Black has a minimally rational understanding of the connection between the fact the State is seeking to kill him and the fact that the State convicted him or murder, he is competent under *Panetti*—and that no more is required of the courts. State's Response at 36 (claiming "The protection under *Ford* and its

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[5] The State also makes a jurisdictional argument that this Court "cannot even entertain" Mr. Black's "attack" on Supreme Court precedent. State's Response at 36 (citing *Baskin Pierce & Allred Constr., Inc.*, 676 S.W.3d 554, 576 (Tenn. 2023)). Such an argument ignores this Court's duty to interpret Mr. Black's rights under the Tennessee Constitution and wholly fails to engage with Mr. Black's argument that the Supreme Court has not yet addressed the question presented here. That is, while the Supreme Court established the *Panetti* Cognitive Test to protect those whose have lost their sanity to delusions or psychosis after conviction, the Court has not had occasion to address the critical question regarding the protective floor for idiots required by the common law as enshrined in the Eighth Amendment. *See* Opening Brief at 5, 19, 50 (noting that the question for which the Supreme Court granted certiorari in *Madison* explicitly limited the Court's determination to that which was required by evolving standards of decency); *see also Madison v. Alabama*, 586 U.S. 265, 287 (2019) (Alito, J., dissenting) (arguing that the Majority failed to follow precedent regarding the scope of questions presented in the Petition for Certiorari).

progeny fully encompasses that under the common law." And that "[a] man is not an idiot if he has nay glimmering of reason").[6]

The State's argument fails to engage with the historical fact that the Cognitive Test does not provide the same protection as was available at common law at the time of the Founding and that, as such, the Cognitive Test cannot reflect the standard by which "idiocy" claims are resolved.

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[6] Dr. Baecht's finding that Mr. Black "likely meets the low bar" for competency under the *Panetti* "Cognitive Test," does not equate to the State's misleading assertion that Mr. Black is not severely impaired, and no rational trier of fact could find Mr. Black incompetent. In fact, Dr. Baecht found that Mr. Black is severely impaired.

Dr. Baecht concluded that Mr. Black has developed increasingly impairing neurocognitive deficits in the past several years that meet the diagnostic criteria for Major Neurocognitive Disorder and that Mr. Black meets the criteria for intellectual disability. TR 111-12 (Baecht 2025). Dr. Baecht found that "Mr. Black's current neurocognitive deficits impair his decision-making abilities, his ability to recall the facts of his case and trial, and his ability to communicate with his defense counsel about his case." *Id.* at 112.

Further, while finding that Mr. Black has a rational understanding of the reason for his execution as defined by *Panetti*, Dr. Baecht also found that:

> Mr. Black is currently unable to accurately recall the events from his trial, and he holds many mistaken beliefs (i.e., confabulations arising from his neurocognitive disorder) about the events which led to his arrest and conviction. Notably, if the Court were to hold a broader interpretation of "rational understanding" of the reason for his execution (i.e., an ability to accurately recall his trial without confabulations), then Mr. Black would not be competent to be executed.

Id. at 111-12. Additionally, Dr. Baecht found that Mr. Black is not competent to assist counsel and that, if the courts were to recognize that such is necessary for competence to be executed, Mr. Black would not be competent. *Id.* at 112.

In *Panetti* the United States Supreme Court was clear that it did "*not attempt to set down a rule governing all competency determinations.*" *Panetti v. Quarterman*, 551 U.S. 930, 960–61 (2007) (emphasis added)). That statement is especially salient given that *Panetti*, and its predecessor *Ford*, specifically addressed inmates who suffered from severe mental illness—and not the characteristic deficits of "idiocy." *Id.* at 936–37; *Ford*, 477 U.S. at 402–04. The United States Supreme Court did not envision that all competency claims would be governed by the *Panetti* standard and it expressly said so.

There was no need for Mr. Black to expound on the *Panetti* Cognitive Test. *See*, State's Response at 42 (accusing Mr. Black of "tellingly avoid[ing] any mention" of Dr. Baecht's findings under the Cognitive Test). Mr. Black's argument is not that he is incompetent to be executed under the Cognitive Test, rather it is that the Cognitive Test is insufficient to provide the protections for "idiots" that were available under the common law at the time of the Founding. And while *Panetti* may continue to provide a floor for the determination of incompetence to be executed for those who suffer from mental illness that affects their current rationality, it does not provide the standard to adjudicate

common law claims of "idiocy."[7] This Court held that common law rights could be asserted in a proceeding brought pursuant to *Van Tran*. *Van Tran*, 6 S.W.3d at 265. That holding recognized that common law prohibitions on the execution of the incompetent—however defined—were incorporated in the Eighth Amendment because, at a minimum, that is what the Eighth Amendment must protect. *Ford*, 477 U.S. at 405. In spite of this, the State complains that Mr. Black has brought a common law claim, somehow distinguished from the Eighth Amendment. State's Response at 23 (arguing that Mr. Black failed to raise a genuine issue of his competency). But both *Ford* and *Van Tran* were careful to recognize that common law prohibitions on the execution of the incompetent remained in force.

More fundamentally, the State resists the clear mandate of recent Supreme Court jurisprudence. It is widely understood that the Eighth Amendment "codified a *pre-existing* right." *District of Columbia v. Heller*,

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[7] The common law limited inquiries into rationality to "lunacy" cases. "An unsound mind . . . is marked by delusion, mingles ideas of imagination with those of reality, those of reflection with those of sensation, and mistakes one for the other. . . . Insane delusion consists in the belief which no rational person would have believed." Leonard Shelford, *A Practical Treatise of the Law concerning Lunatics, Idiots, and Persons of Unsound Mind* 25–26 (1847). In contrast, "idiots" deficits "proceed from want of quickness, activity, and motion in their intellectual faculties, whereby they are deprived of reason: whereas madmen, on the other side, seem to suffer by the other extreme, for they do not appear to have lost their faculty of reasoning: but having joined to together some ideas very wrongly, they mistake them for truths, and they err as men do that argue from wrong principles. For, by the violence of their imagination, having taken their fancies for realities, they make right deductions from them." *Id.* at 7.

554 U.S. 570, 592 (2008) (emphasis in original); *Ford*, 477 U.S. at 405; *Solem v. Helm*, 463 U.S. 277, 286 (1983). "The Amendment 'was not intended to lay down a novel principle but rather codified a right inherited from our English ancestors.'" *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 20 (2022) (quoting *Heller*, 554 U.S. at 599); *Helm*, 463 U.S. at 286; *Ford*, 477 U.S. at 405. As such, this Court's caselaw "require[s] courts to consult history to determine the scope of that right." *Bruen*, 597 U.S. at 25.

In order to animate the text of the Eighth Amendment, courts and litigants must examine the common law at the time of the Founding and other relevant historical materials such as legal treatises, commentary, and state practices. *See, e.g.*, *Ramos v. Louisiana*, 590 U.S. 83, 90 (2020) (Using "the common law, state practices in the founding era, or opinions and treatises written soon afterward" to settle the question of the jury unanimity requirement.). This is because "the Framers' view provides a baseline for our own day: The Amendment 'must provide *at a minimum* the degree of protection it afforded when it was adopted.'" *Lange v. California*, 594 U.S. 295, 309 (2021) (quoting *United States v. Jones*, 565 U.S. 400, 411 (2012) (emphasis in original)). By dismissing Mr. Black's claim as a quaint foray into history, the State utterly has failed to understand—let alone address—the basic exercise in constitutional interpretation.

When "[h]istorical research now calls into question" our "understanding of the relevant common law rules at the time of the adoption" doctrines must correspondingly adjust based upon improved

historical understanding. *Franklin v. New York*, 145 S. Ct. 831, 831 (2025) (Alito, J., dissenting from the denial of certiorari). Although this Court does not write on a blank slate, its existing jurisprudence—particularly *Van Tran*'s explicit recognition of the common law—permits litigants and, ultimately this Court, to develop its jurisprudence based on the history and traditions of the country at the time of the Founding. Anything less would be an abdication of constitutional duty.

III. The State disingenuously mischaracterizes Mr. Black's argument and the standard for relief.

The State asserts: "The claim boils down to a suggestion that the common law prohibited execution of those merely unable to manage their own affairs." State's Response at 37. Mr. Black exhibits four characteristics of "idiocy": 1) low intellectual functioning; 2) an inability to manage his affairs; 3) the presence of "unsound memory" or significant deficits of memory; and 4) brain malformations. With respect to *each* of these conditions, Mr. Black's current functioning qualifies as a statistical outlier. Opening Brief at 2, 41–42. The State is thus partially correct that the common law examined whether an individual was capable of managing their own affairs. But nowhere has Mr. Black asserted that the mere inability to manage one's own affairs is sufficient to make a finding of incompetency. In Mr. Black's case it is the combination of intellectual deficits acquired at birth and early in life that were worsened by a degenerative brain damage causing large scale decreases in brain volume. These conditions manifest as dementia, one of the tell-tale signs of which is an inability to manage one's own affairs. The State's

oversimplified description of Mr. Black's current mental functioning is thoroughly discredited by the record before this Court.

The State appears to seriously dispute whether "idiots" were incompetent to be executed at common law: "[C]onspicuously absent from Black's brief and trial court filings is a single authority proscribing the execution of that class." State's Response at 37. Although dispute over the criteria for "idiocy" may exist, there can be no serious argument that "idiots" were incompetent to be executed at the time of the Founding. *See* Opening Brief at 4, 21–24.

Edward Coke—perhaps the preeminent common law jurist—stated in *Bevereley's Case* that "Non compos shall not lose his life for felony or murder." Edward Coke, *Reports of Sir Edward Coke in Thirteen Parts* 571 (1826). As was discussed in Mr. Black's opening brief, non compos mentis includes "lunatics," "idiots," and those individuals who by reason of "sicknesse, griefe, or other accident wholly loseth his memorie." Edward Coke, 1 *Instiutes of the Laws of England* 247 (1633). Coke, whose work the Supreme Court characterized as "a lodestar for later common lawyers," unequivocally expressed that "idiots" were incompetent to be executed. *Washington v. Glucksberg*, 521 U.S. 702, 712 n.10 (1997).[8]

Contrary to the State's assertion, Mr. Black does not "resort[] to flooding the zone with irrelevant sources discussing mental defects in

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[8] *See also* Matthew Hale, *History of Pleas of the Crown* 33 (1736) ("[F]or whether the party that is supposed to commit a capital offense be thus found an ideot, madman, or lunatic, or not, yet if really he be such, he shall have the privilege of his idiocy, lunacy, or madness, to excuse him in capitals.").

civil contexts with no bearing on his competency for execution." State's Response at 38. The State cites no authority for the proposition that "idiocy" standards differed across legal contexts. *See generally* State's Response (established by omission). "Idiocy" was a legal term with definitions based upon the characteristics exhibited by an individual, most especially limited intellectual functioning. Leonard Shelford, *Practical Treatise on the Law concerning Lunatics, Idiots and Persons of Unsound Mind* 2 (1833). Incompetency was established by the deficit in one's intellectual functioning, not by a context specific examination of one's capacity for each legal affair. More fundamentally, an "idiot" was an "idiot." There were not separate and distinct inquiries depending upon context.[9] "By the very nature of these cases, the intelligence is involved." Francis Wharton & Moreton Stille, *Wharton and Stille's Medical Jurisprudence* 860 (1905). This was the fundamental inquiry across contexts: whether an individual lacked intellectual capacity to a sufficient degree to be deemed incompetent. The State's assertion to the contrary lacks any foundation in history.

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[9] Under English common law "the King shall have custody of the lands of natural fools, taking profits of them without waste or destruction, and shall find them their necessaries, of whose fee soever the land be holden. And after the death of such idiots, he shall render them to the right heirs." Leonard Shelford, *A Practical Treatise of the Law concerning Lunatics, Idiots, and Persons of Unsound Mind* 10 (1847). Accordingly, a prior finding of "idiocy" resulted in civil incompetency for the duration of the "idiot's" life. No subsequent proceeding was necessary to re-establish an individual's "idiocy" and resulting incompetency. The State is thus mistaken that a finding of "idiocy" in one context would not result in a finding of "idiocy" in another context.

Finally, the State asserts that Mr. Black seeks to use "his own supplied definitions."[10] State's Response at 30. Respectfully, the definitions of "idiocy" supplied by venerable figures of the common law such as Edward Coke, Matthew Hale, and William Blackstone were supplied long before Mr. Black was condemned to death. Rather than supplying historical evidence that calls these definitions into question, the State attempts to recast these rules as of suspicious origin. In truth, the State's argument amounts to little more than a criticism that Mr. Black "relies too heavily on history." *Bruen*, 597 U.S. at 76 (Alito, J., concurring).

CONCLUSION

Mr. Black respectfully requests that this Court vacate the opinion of the trial court and remand the matter for an evidentiary hearing.

Respectfully submitted this the 1st day of July, 2025.

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[10] The State appears to believe that a different, more demanding standard would apply in criminal matters. In fact, it was the opposite: historically the civil-criminal distinction saw the madman/idiot *less* responsible in criminal than civil law. Lord Coke noted that idiocy had broader effect in criminal proceedings than in civil cases. "But this holdeth only in civil causes; for in criminal causes, as felonie, &c. the act and wrong of a madman shall not bee imputed to him, for that in those causes, actus non facit reum, nisi mens sit rea, and he is amens (id est) sine mente, without his minde or discretion; and furiosus solo furore punitur, a madman is only punished by his madnesse." Edward Coke, 1 *Institutes of Laws of England* 247b (1633).

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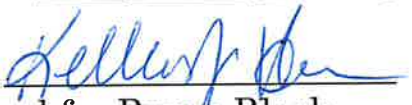
BY: 
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CERTIFICATE OF COMPLIANCE

I certify that this Reply contains 3741 words as determined by the word processing program used to prepare this document. This is under the 5,000 word limit set forth in Tenn. R. App. P. 30(e).

BY: 
Counsel for Byron Black

CERTIFICATE OF SERVICE

I, Kelley J. Henry, certify that on July 1, 2025, a true and correct copy of the foregoing was served via email and United States Mail to opposing counsel, Raymond Lepone, Alan Grove, G. Kirby May, and

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