No.

IN THE
Supreme Court of the United States

BYRON LEWIS BLACK,

Petitioner,

v.

STATE OF TENNESSEE,

Respondent.

APPLICATION FOR A STAY OF EXECUTION

EXECUTION SCHEDULED FOR AUGUST 5, 2025, AT 10:00 AM.

OFFICE OF THE FEDERAL PUBLIC DEFENDER
FOR THE MIDDLE DIST. OF TENNESSEE
CAPITAL HABEAS UNIT

KELLEY J. HENRY*
CHIEF, CAPITAL HABEAS UNIT

AMY D. HARWELL
FIRST ASST. FED. PUB. DEFENDER
ASST. CHIEF, CAPITAL HABEAS UNIT

MARSHALL A. JENSEN
ASSISTANT FEDERAL PUBLIC DEFENDER

810 Broadway, Suite 200
Nashville, TN 37203
Phone: (615) 736-5047
Fax: (615) 736-5265
Email: Kelley_Henry@fd.org

**Counsel of Record*

To the Honorable Brett M. Kavanaugh, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Sixth Circuit:

Byron Black is scheduled to be executed on **August 5, 2025, at 10:00 AM**. Mr. Black respectfully requests a stay of his execution pending this Court's disposition of his petition for a writ of certiorari.

I. JURISDICTION

The Tennessee Supreme Court entered judgment on July 8, 2025. Mr. Black's petition for a writ of certiorari was filed on July 15, 2025. The Tennessee Supreme Court set Mr. Black's execution for August 5, 2025. Pursuant to Supreme Court Rule 23.3, Mr. Black gives notice that he sought a stay of execution from the Tennessee Supreme Court, which denied Mr. Black's request on July 8, 2025. This Court has jurisdiction to entertain Mr. Black's petition for certiorari and application for a stay of execution under 28 U.S.C. §§ 1257(a) and 1651(a).

II. BACKGROUND

Byron Black was convicted and sentenced to death in 1989. On direct appeal, a divided Tennessee Supreme Court affirmed his convictions and sentences. *State v. Black*, 815 S.W.2d 166, 170 (Tenn. 1991). Mr. Black exhausted the standard, three-tier appellate review process. *Black v. Carpenter*, 866 F.3d 734 (6th Cir. 2017); *Black v. State*, No. M2004-01345-CCA-R3PD, 2005 WL 2662577 (Tenn. Crim. App. Oct. 19, 2005); *Black v. State*, No. 01C01-9709-CR-00422, 1999 WL 195299 (Tenn. Crim. App. Apr. 8, 1999); *Black*, 815 S.W.3d at 170. On March 3, 2025, the Tennessee Supreme Court set Mr. Black's execution for August 5, 2025. Pursuant to the procedures outlined in *Van Tran v. State*, 6 S.W.3d 257 (Tenn.

1999), the Tennessee Supreme Court remanded Mr. Black's case to the trial court to determine his competency to be executed.

On June 5, 2025, the trial court entered a memorandum and order denying relief. The Tennessee Supreme Court denied Mr. Black relief on July 8, 2025. Simultaneously to this application for a stay of execution, Mr. Black filed a petition for a writ of certiorari.

III. REASONS FOR GRANTING THE STAY

An application for a stay of execution is evaluated under the familiar four factor test that analyzes:

> (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

Nken v. Holder, 556 U.S. 418, 434 (2009).

A. Mr. Black has shown a reasonable likelihood of success on the merits of his claim.

As a result of significantly subaverage intellectual functioning, profound deficits of memory, an inability to manage his own affairs, and brain damage, Mr. Black is incompetent to be executed. Mr. Black's petition for certiorari, filed simultaneously with this application, asserts that his execution is prohibited by a deeply engrained common law tradition that prohibited the execution of "idiots." This Court has recognized on numerous occasions that such a prohibition exists in our law but has never articulated the relevant standard for such a claim. *Penry v. Lynaugh*, 492 U.S. 302, 305 (1989); *Ford*, 477 U.S. at 406.

As Mr. Black's petition makes clear, by the time of the Founding, common law courts held that the defining characteristics of an "idiot" were low intellectual functioning, the existence of "unsound memory," the inability to manage one's own affairs, and "gross malformation of the brain." Francis Wharton, et. al, *Wharton and Stille's Medical Jurisprudence* 859 (1905); George D. Collinson, *Treatise on the Law concerning Idiots, Lunatics, and Other Person Non Compotes Mentis* 58 (1812); William Blackstone, 1 *Commentaries on the Laws of England* 304 (1778); Matthew Hale, 1 *History of Pleas of the Crown* 30 (1736); Edward Coke, 1 *Institutes of the Laws of England* 247 (1633). Mr. Black meets each of these criteria and exhibits significant, debilitating deficits in all four.

This case simply asks this Court to "recognize[] in our law a principle that has long resided there." *Ford*, 477 U.S. at 417. It is beyond dispute that, at the time of the Founding, the law prohibited the execution of "idiots." Yet, this Court's competency to be executed jurisprudence has only ever addressed cases involving significant mental illness and cases relying on the "evolving standards of decency." It has yet to address the proper standard to address a common law claim based upon low intellectual functioning.

Mr. Black's petition for certiorari recounts in detail the characteristics of "idiocy" at common law and how the common law evolved up until the Founding. That recounting demonstrates that Mr. Black various conditions would have constituted "idiocy" at common law. Mr. Black relies on the uncontested view that an execution

that would have been prohibited at the Founding, remains unconstitutional under the Eighth Amendment.

Mr. Black's impairments manifested when he was a young child. For example, Mr. Black was held back in the second grade and was incapable of understanding simple rules of normal childhood games like a Tisket-a-Tasket or Red Light, Green Light. Mr. Black's brain sustained numerous, significant insults at an early age that likely compromised his neurocognitive functioning. Mr. Black "was exposed to neurotoxins *in utero* and as a small child," including fetal alcohol exposure and lead poisoning. "Exposure to these toxins causes structural damage to the brain, including orbital frontal and temporal lobes that contribute to attention disorder and motor impairment." Both of these exposures have significant neurocognitive effects and may account for his impairments.

Mr. Black's high school football coach recounts that although Mr. Black had good physical ability, "in over 30 years as a coach, [Black] stood out as especially slow." Mr. Black was unable to understand and execute offensive plays, such that his coach had to create "a highly simplified playbook" for him. Mr. Black was more capable of grasping defense, where the task at hand was simpler: to run and tackle the ball carrier. *Id.* Dr. Ruben Gur notes that Mr. Black was "an avid football player at varsity level and has suffered several head injuries." Based upon the brain imaging studies in 2022, Dr. Gur states that "[t]raumatic brain injury is also consistent with several findings of structural and functional abnormalities, such as decreased

metabolism in the cingulate gyrus and signs of diffuse axonal injury." TR 98 (Gur 2025).

Half a dozen experts have diagnosed Mr. Black with an intellectual disability. Notably, the State's expert who previously testified that Mr. Black was not intellectually disabled revisited her opinion and concluded that under current legal and diagnostic criteria, Mr. Black is intellectually disabled. At his most recent evaluation with Dr. Martell, Mr. Black could not accurately make change for a five-dollar bill. Even though he married and fathered a child, Mr. Black lived with his parents until his arrest at 32. Testing shows that 99 out of 100 men Mr. Black's age and education have a better memory. Fewer than one in 10,000 individuals' brains are as impaired as Mr. Black's. Neuropsychological testing indicates that Mr. Black's abilities in math fall in the 2nd percentile and his reading abilities in the 4th percentile. Put differently, 98% of the population exhibits stronger performance in math and 96% of the population exhibits better reading skills.

Mr. Black's impairments and symptoms intensify by the day as he ages. Structurally, Mr. Black's brain volume is now three and a half standard deviations below the mean; some regions of his brain have atrophied, and their volume is more than four standard deviations below the norm. He now meets the clinical requirements for a diagnosis of major neurocognitive disorder (dementia).

Under Supreme Court Rule 10(c), granting a writ of certiorari is appropriate where a state court of last resort "has decided an important question of federal law that has not been, but should be, settled by this Court." This case precisely fits those

requisites. Mr. Black raises an unresolved issue of law that this Court has never directly passed judgment upon. Furthermore, this case presents consequential considerations. This case implicates fundamental issues of constitutional interpretation, including to the extent to which court must analyze the history and tradition of the constitution when adjudicating competency to be executed claim. Those traditions strongly support granting a stay of execution because executing Mr. Black "is no less abhorrent today than it has been for centuries." *Ford*, 477 U.S. at 417. Under these circumstances, there is a reasonable likelihood that four members of this Court would vote to grant certiorari. *Barefoot v. Estelle*, 463 U.S. 880, 895 (1983).

B. There can be no fairminded disagreement that Mr. Black will suffer irreparable harm absent a stay.

Mr. Black will plainly suffer irreparable harm unless this Court stays his execution pending disposition of his petition for certiorari. Absent a stay, Mr. Black will be unlawfully executed and, as this Court has made clear, an "execution is the most irremediable and unfathomable of penalties." *Ford*, 477 U.S. at 411.

C. A stay of execution will not substantially injure the interest of the State of Tennessee and the public interest lies in prohibiting an unconstitutional execution.

When assessing the traditional equitable factors of the harm to the opposing party and the public interest, "[t]hese factors merge when the Government is the opposing party." *Nken*, 556 U.S. at 435. Undoubtedly, the State of Tennessee has an interest in the enforcement of criminal judgments. *Hill v. McDonough*, 547 U.S. 573, 584 (2006). The State's interest in executing Mr. Black, however, is premised upon

the enforcement of that judgment being lawful. When, as here, a litigant demonstrates that the enforcement of such a judgment would be unconstitutional, the public interest weighs in favor of the party whose constitutional rights will be violated. *United States v. Raines*, 362 U.S. 17, 27 (1960) ("[T]here is the highest public interest in the due observance of all the constitutional guarantees . . . ."); *Brandt by & through Brandt v. Rutledge*, 47 F.4th 661, 672 (8th Cir. 2022) ([I]t is 'always in the public interest to prevent the violation of a party's constitutional rights.") (quoting *D.M. by Bao Xiong v. Minnesota State High Sch. League*, 917 F.3d 994, 1004 (8th Cir. 2019)); *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) ("Generally, public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution."); *Chabad of S. Ohio & Congregation Lubavitch v. City of Cincinnati*, 363 F.3d 427, 436 (6th Cir. 2004) ("[T]he public interest is served by preventing the violation of constitutional rights."); *Deja Vu of Nashville, Inc. v. Metro. Gov't of Nashville & Davidson Cnty., Tennessee*, 274 F.3d 377, 400 (6th Cir. 2001) ("[I] t is always in the public interest to prevent violation of a party's constitutional rights."); *Mintz v. Chiumento*, 724 F. Supp. 3d 40, 66 (N.D.N.Y. 2024) ("There is also a public interest in avoiding violations of constitutional rights, as the 'Government does not have an interest in the enforcement of an unconstitutional law.'") (quoting *New York Progress & Prot. PAC v. Walsh*, 733 F.3d 483, 488 (2d Cir. 2013)); *Willey v. Sweetwater Cnty. Sch. Dist. No. 1 Bd. of Trs.*, 680 F. Supp. 3d 1250, 1290 (D. Wyo. 2023) ("It is always in the public interest to prevent the violation of a party's constitutional rights."); *see also Labrador*

v. Poe by & through Poe, 144 S. Ct. 921, 923 (2024) (holding a judgment should be enforced in normal course "absent a showing of its unconstitutionality") (Gorsuch, J., concurring). Likewise, "[n]o substantial harm can be shown in the enjoinment of an unconstitutional policy." *Chabad of S. Ohio v. City of Cincinnati*, 233 F. Supp. 2d 975, 987 (S.D. Ohio 2002), *aff'd sub nom. Chabad of S. Ohio & Congregation Lubavitch v. City of Cincinnati*, 363 F.3d 427 (6th Cir. 2004).

Here, Mr. Black has shown that the execution of an individual with Mr. Black's conditions—low intellectual functioning, "unsound memory," an incapability of managing his own affairs, and brain "malformations"—violates the Constitution, as such an execution would be outlawed by the common law at the time of the Founding. Accordingly, Mr. Black has not only shown a strong likelihood of success on the merits but also shown that the public interest weighs in favor of a stay of execution. Anything less will permit the execution of an individual that would have constituted "a miserable spectacle" at common law. *Ford*, 477 U.S. at 407 (quoting Edward Coke, 3 *Institutes of Laws of England* 6 (1680)).

D. Mr. Black has not delayed in bringing his claim.

As this Court has acknowledged, *Ford*-based incompetency claims, are not ripe until execution is imminent. *See Stewart v. Martinez-Villareal*, 523 U.S. 637, 644 (1998); *see also Panetti v. Quarterman*, 551 U.S. 930, 943 (2007) (noting *Ford* claim not ripe until after the time to file a first habeas petition). This action is being filed close in time to Mr. Black's execution because of the procedures outlined in the Tennessee Supreme Court's decision *Van Tran v. State*, 6 S.W.3d 257 (Tenn. 1999) and its order in Mr. Black's case remanding the case for *Ford* proceedings. Under

Tennessee state law, these proceedings must occur immediately prior to execution on an extremely short timeline. *Id.* at 266–72 (outlining an extremely rapid timeline that is initiated only once "execution is imminent"). Pursuant to the Tennessee Supreme Court's order, Mr. Black's competency proceedings commenced on May 29, 2025. The trial court concluded proceedings on June 5, 2025, and forwarded the record to the Tennessee Supreme Court on June 16, 2025. The Tennessee Supreme Court denied relief on July 8, 2025. Mr. Black's petition for certiorari and this application for a stay of execution were filed seven days after the Tennessee Supreme Court's decision in this matter and three weeks prior to his execution. Under these circumstances, Mr. Black has not delayed. *See Dunn v. Ray*, 586 U.S. 1138, 1138 (2019) (noting that the "last-minute nature" of a stay application may weigh against granting a stay).

IV. CONCLUSION AND PRAYER FOR RELIEF

The equities of this case weigh in favor of Mr. Black's because his case presents a strong likelihood of success on the merits, grievous risk of executing an individual in violation of the constitution, and where Mr. Black has not acted with undue delay. Mr. Black respectfully requests that the Court grant this application, stay his execution, and grant any other relief that the Court may find just.

Respectfully submitted this 14th day of July, 2025,

FEDERAL PUBLIC DEFENDER FOR
THE MIDDLE DISTRICT OF TENNESSEE
CAPITAL HABEAS UNIT

KELLEY J. HENRY
Supervisory Asst. Federal Public Defender

AMY D. HARWELL
First Assistant Federal Public Defender
Assistant Chief, Capital Habeas Unit

MARSHALL JENSEN
Asst. Federal Public Defender

810 Broadway, Suite 200
Nashville, TN 37203
Phone: (615) 736-5047
Fax: (615) 736-5265
Email: Kelley_Henry @fd.org

BY: /s/ Kelley J. Henry

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of this Response has been served via the electronic filing system to Associate Solicitor General Nick Spangler, at the Office of the Tennessee Attorney General, P.O. Box 20207, Nashville, Tennessee 37202 on this 16th day of July, 2025.

/s/ Kelley J. Henry

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

BYRON LEWIS BLACK v. STATE OF TENNESSEE

Criminal Court for Davidson County
No. 88-S-1479

No. M2000-00641-SC-DPE-CD

ORDER

Byron Lewis Black, a death-row inmate, appeals the trial court's denial of his request for an evidentiary hearing on his petition asserting he is not competent to be executed. The trial court held that Mr. Black did not make the required threshold showing; that is, he did not offer evidence which, if deemed credible, would show he is not presently competent to be executed. *See Van Tran v. State*, 6 S.W.3d 257 (Tenn. 1999). For that reason, the trial court declined to proceed to an evidentiary hearing on competency. On appeal, Mr. Black argues the trial court should have determined his competency to be executed based on the criteria for "idiocy" used in the common law during the period in which our nation was founded. To the extent Mr. Black seeks to relitigate his claim that he is "intellectually disabled" and therefore ineligible for the death penalty, that question was fully litigated—repeatedly—in prior proceedings. Mr. Black did not prevail, those rulings and appeals became final long ago, and he cannot relitigate those adverse rulings in this competency proceeding. To the extent Mr. Black is asking this Court to reconsider the standard for competency to be executed and adopt a standard that differs from longstanding precedent from this Court and the United States Supreme Court, we decline to do so. Under this Court's long-established standard for competency to be executed, we agree with the trial court that the evidence offered by Mr. Black did not make a threshold showing sufficient to warrant an evidentiary hearing on competency.[1] Accordingly, the judgment of the trial court is affirmed.

I. Procedural Background

Over thirty-six years ago, the defendant, Byron Lewis Black, was convicted of the

[1] We conclude that this appeal does not present extraordinary circumstances that necessitate oral argument. *See Van Tran*, 6 S.W.3d at 272.

March 1988 triple murders of his girlfriend, Angela Clay, age 29, and her two daughters, Latoya, age 9, and Lakeisha, age 6. Mr. Black received consecutive life sentences for the murders of Angela Clay and Latoya Clay, and he was sentenced to death for the murder of Lakeisha Clay based on six aggravating circumstances found by the jury. On direct appeal, this Court affirmed Mr. Black's convictions and sentences. *State v. Black*, 815 S.W.2d 166 (Tenn. 1991), *reh'g denied* (Tenn. Sept. 3, 1991).

In 1992, Mr. Black sought state post-conviction relief. After a hearing, the post-conviction court denied relief. The Tennessee Court of Criminal Appeals affirmed the post-conviction court's judgment, and this court denied Mr. Black's application for permission to appeal. *Black v. State*, No. 01C01-9709-CR-00422, 1999 WL 195299 (Tenn. Crim. App. Apr. 8, 1999), *perm. app. denied* (Tenn. Sept. 13, 1999), *cert. denied*, *Black v. Tennessee*, 528 U.S. 1192 (2000).

Mr. Black's extensive efforts to establish that he was intellectually disabled at the time of the crime began in August 2000, when he filed a petition for writ of habeas corpus in the United States District Court for the Middle District of Tennessee. *See Black v. Bell*, 181 F.Supp.2d 832, 839 (M.D. Tenn. 2001). Among other claims, the petition argued that Mr. Black was "mentally retarded" (now "intellectually disabled").[2] The district court granted the State's motion for summary judgment and dismissed the petition. *Id*. at 883.

Mr. Black appealed the district court's ruling to the United States Court of Appeals for the Sixth Circuit. However, in this time frame, this Court issued its opinion in *Van Tran v. State*, 66 S.W.3d 790 (Tenn. 2001), holding as a matter of first impression that the execution of a "mentally retarded" person violates the Eighth Amendment to the United States Constitution and Article I, section 16 of the Tennessee Constitution. Significantly, *Van Tran* further held that retroactive application of this new rule was warranted for cases on collateral review. Approximately six months later, on June 20, 2002, the United States Supreme Court held that the execution of "mentally retarded" persons violates the Eighth Amendment to the United States Constitution. *Atkins v. Virginia*, 536 U.S. 304 (2002).

The Sixth Circuit held the appeal in abeyance while Mr. Black pursued a motion to reopen his state post-conviction proceedings seeking to establish his ineligibility for the death penalty based on the "mental retardation" categorical exclusion announced in *Van Tran* and *Atkins*. After an evidentiary hearing, the state post-conviction court found that Mr. Black was not "mentally retarded." The Tennessee Court of Criminal Appeals affirmed, and this Court denied Mr. Black's application for permission to appeal. *Black v.*

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[2] The statute was amended while Mr. Black was pursuing habeas relief in the federal courts. The amended statute substituted the term "intellectual disability" for the term "mental retardation." *See* Act of March 24, 2010, ch. 734, §§ 1, 7, 2010 Tenn. Pub. Acts, https://perma.cc/NY2N-MSMW (codified as amended at Tenn. Code Ann. § 39-13-203). We use the former term only to maintain consistency with the record from that time period.

State, No. M2004-01345-CCA-R3-PD, 2005 WL 2662577 (Tenn. Crim. App. Oct. 19, 2005), *perm. app. denied* (Tenn. Feb. 21, 2006), *cert. denied*, *Black v. Tennessee*, 549 U.S. 852 (2006).

The Sixth Circuit then remanded the case to the federal district court for the limited purpose of reconsidering Mr. Black's "mental retardation" claim in light of *Atkins*. In April 2008, the federal district court dismissed Mr. Black's *Atkins* claims, and the case returned to the Sixth Circuit in a consolidated appeal.

During the pendency of the Sixth Circuit appeal, this Court released its decision in *Coleman v. State*, 341 S.W.3d 221 (Tenn. 2011), which clarified Tennessee's intellectual disability statute. The Sixth Circuit affirmed the district court in part; however, the panel again remanded the case for further proceedings related to the impact of *Coleman*. *Black v. Bell*, 664 F.3d 81 (6th Cir. 2011), *reh'g denied* (6th Cir. Jan. 4, 2012). On this second remand, the federal district court concluded that Mr. Black failed to carry his burden of demonstrating intellectual disability (formerly "mental retardation") by a preponderance of the evidence. *Black v. Colson*, No. 3:00–0764, 2013 WL 230664 (M.D. Tenn. Jan. 22, 2013), *aff'd sub nom.*, *Black v. Carpenter*, 866 F.3d 734 (6th Cir. 2017), *reh'g en banc denied* (6th Cir. Oct. 27, 2017), *cert. denied sub nom.*, *Black v. Mays*, 584 U.S. 1015 (2018). The Sixth Circuit affirmed that decision, agreeing with the district court that Mr. Black had not proved by a preponderance of the evidence that he had significantly subaverage general intellectual functioning as evidence by an I.Q. score of 70 or below. *Black v. Carpenter*, 866 F.3d at 744–50. Notably, the Sixth Circuit evaluated Mr. Black's intellectual disability claim in light of this Court's decision in *Coleman* as well as the United States Supreme Court's then-recent guidance on intellectual disability determinations in *Moore v. Texas*, 581 U.S. 1 (2017), *Brumfield v. Cain*, 576 U.S. 305 (2015), *Hall v. Florida*, 572 U.S. 701 (2014).

Upon the conclusion of the standard three-tier appeals process,[3] on September 20, 2019, the State filed a motion to set an execution date for Mr. Black in accordance with Tennessee Supreme Court Rule 12(4).[4] In response to the motion, Mr. Black raised the issue of his competency to be executed and requested a hearing pursuant to *Van Tran v. State*, 6 S.W.2d 237 (Tenn. 1999). *See* Tenn. Sup. Ct. R. 12(4)(A).

On February 24, 2020, this Court granted the State's motion to set an execution date for Mr. Black and established deadlines for proceedings to consider Mr. Black's claim that he is not competent to be executed, citing *Van Tran v. State*, 6 S.W.3d at 267-68, *State v.*

[3] The standard three-tier review includes a direct appeal in state court, state post-conviction review, and federal habeas corpus review.

[4] The State originally filed a motion to set an execution date in March 2000; however, the motion was denied at that time due to the continuing habeas corpus proceedings.

Irick, 320 S.W.3d 284 (Tenn. 2010), and *Madison v. Alabama*, 586 U.S. 265 (2019). Upon the motion of Mr. Black, the Court reset the execution for April 8, 2021; however, the Court ultimately stayed the execution due to the COVID-19 pandemic.

In 2021, the Tennessee General Assembly amended Tennessee's intellectual disability statute. *See* Act of April 26, 2021, ch. 399, 2021 Tenn. Pub. Acts, https://perma.cc/CKC7-HVRD (codified at Tenn. Code Ann. § 39-13-203(g)). Relevant here, the revisions established a procedure authorizing certain death-row inmates to raise an intellectual disability claim by filing an appropriate motion with the trial court; however, the amended statute prohibited such a motion for any inmate whose intellectual disability claim had been "previously adjudicated on the merits." *See id.* at §2 (codified at Tenn. Code Ann. § 39-13-203(g)). On June 3, 2021, pursuant to the revised statute, Mr. Black filed a "Motion to Declare Defendant Intellectually Disabled," again seeking categorical exclusion from the death penalty. After reviewing the procedural history of the case, the trial court denied the motion, finding that Mr. Black's intellectual disability claim had been previously adjudicated on the merits. The Tennessee Court of Criminal Appeals affirmed. *Black v. State*, No. M2022-00423-CCA-R3-PD, 2023 WL 3843397 (Tenn. Crim. App. June 6, 2023), *no perm. app. filed.*[5]

During this time, this Court lifted the previous stay of execution and reset Mr. Black's execution for August 18, 2022. However, in April 2022, Tennessee Governor Bill Lee granted a temporary reprieve to death-row inmate, Oscar Franklin Smith, and subsequently paused all executions, including the scheduled execution of Mr. Black.

Tennessee resumed executions in 2025, adopting a revised single-drug protocol utilizing pentobarbital. By order dated March 3, 2025, this Court reset Mr. Black's execution for August 5, 2025, with corresponding deadlines for proceedings to consider Mr. Black's competency-to-be-executed claim, including (per *Van Tran*) an initial determination by the trial court of whether Mr. Black had made the requisite threshold showing to warrant a competency hearing.

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[5] Mr. Black chose not to seek review in this Court of the 2023 Tennessee Court of Criminal Appeals decision. Nonetheless, Mr. Black and the amici continue to raise issues resolved in that appeal, especially the legitimacy of the district attorney's "concession" that Mr. Black is intellectually disabled. As noted by our Court of Criminal Appeals, the district attorney did not stipulate a fact, but instead attempted to stipulate a legal conclusion, namely, whether Mr. Black is intellectually disabled under legal standards. *Black*, 2023 WL 3843397, at *9–10 (citations omitted). As the intermediate appellate court recognized, parties may not stipulate to questions of law; before accepting such a concession, courts "independently analyze[] the underlying legal issue to determine whether the concession reflects a correct interpretation of the law." *Black*, 2023 WL 3843397, at *9–10. Here, the trial court rejected the district attorney's purported concession/stipulation as an attempt to avoid the statute's procedural bar, and the Court of Criminal Appeals affirmed. *Id*. Mr. Black chose not to appeal and may not raise the issue in this proceeding.

On May 29, 2025, Mr. Black filed a petition in the Circuit Court for Davidson County, Tennessee, to be declared incompetent to be executed under common law principles prohibiting execution of the "*non compos mentis*." The petition identified three experts, whose recent reports were among the exhibits attached to the petition. The State filed a response to the petition, asserting that the allegations "raise no doubt about [Mr. Black's] present competency," and emphasizing that Mr. Black's own expert found him competent to be executed under the prevailing competency standard. The State asked the trial court to summarily dismiss the petition because Mr. Black failed to make the threshold showing required by *Van Tran*.

On June 5, 2025, the trial court entered a "Memorandum and Order" concluding that Mr. Black's petition and attachments failed to make the requisite threshold showing of a genuine disputed issue regarding Mr. Black's present competency to be executed necessary to warrant an evidentiary hearing. Mr. Black now appeals.

II. Competency to Be Executed

In this appeal, we must consider whether the trial court erred in concluding that Mr. Black failed to make the threshold showing necessary to warrant a hearing on his competency petition.[6] We review the trial court's conclusion de novo with no presumption of correctness afforded to the trial court's determination. *Irick*, 320 S.W.3d at 292; *Thompson v. State*, 134 S.W.3d 168, 177 (Tenn. 2004) (clarifying the standard of review of a trial court's threshold showing determination).

In *Van Tran*, this Court established Tennessee's procedures for litigating competency to be executed, after the United States Supreme Court held in *Ford v. Wainwright*, 477 U.S. 399 (1986), that the Eighth Amendment prohibits the execution of the insane. As indicated in *Ford*, the issue of competency to be executed is ripe for determination only when execution is imminent. *Van Tran*, 6 S.W.3d at 267. Thus, a death-row inmate challenging competency to be executed must raise the claim in response to the State's motion to set an execution date. *Id.* Once the death-row inmate raises the issue, this Court remands the question of competency to be executed to the trial court where the inmate was initially convicted and sentenced. *Id.* Per the deadline established in this Court's order, the inmate must initiate the proceedings by filing in the trial court a petition

[6] *See Van Tran*, 6 S.W.3d at 271–72 (explaining the procedure to automatically appeal the trial court's denial of a competency hearing on the ground that the prisoner failed to make a threshold showing). We note that this procedure does not contemplate the filing of a reply brief in this Court. We have considered Mr. Black's reply brief, but we remind the parties that a motion for leave to file and lodge with the Court is the proper mechanism for filing any pleading not contemplated in the *Van Tran* procedure.

alleging he or she is not competent to be executed. *Id.* at 267–68. The district attorney general must file a response to the petition. *Id.* at 268. Within four days, the trial court must decide if a competency hearing is warranted. An inmate is not entitled to an evidentiary hearing unless the trial court determines the inmate has made a threshold showing that a genuine, disputed issue exists regarding the inmate's *present* competency. *Id.* at 269 (emphasis added). The inmate carries the burden of making this threshold showing. In *Van Tran*, this Court explained:

> This burden may be met by the submission of affidavits, depositions, medical reports, or other credible evidence sufficient to demonstrate that there exists a genuine question regarding petitioner's present competency. In most circumstances, the affidavits, depositions, or medical reports attached to the prisoner's petition should be from psychiatrists, psychologists, or other mental health professionals.

Id. (citations omitted). "At least some of the evidence submitted must be the result of recent evaluations or observations of the inmate." *Id.* The threshold showing cannot be satisfied by only stale evidence related to the inmate's competency or incompetency in the distant past, or by unsupported assertions of a family member or an attorney. *Id.*

The trial court's assessment of the sufficiency of an inmate's threshold showing must be premised on the appropriate standard for competency-to-be-executed proceedings. In *Van Tran*, the Court held that under Tennessee law a prisoner is not competent to be executed "if the prisoner lacks the mental capacity to understand the fact of the impending execution and the reason for it." *Id.* at 266 (adopting the standard suggested by Justice Powell in his partial concurrence in *Ford,* 477 U.S. at 422).[7] Some years later, after the United States Supreme Court revisited the issue of the standard for competence to be executed in *Panetti v. Quarterman*, 551 U.S. 930 (2007), this Court recognized that the competency standard adopted in *Van Tran* must be construed consistently with the principles espoused in *Panetti*. *Irick*, 320 S.W.3d at 294. We explained:

> In our view, *Panetti* teaches that the test for competence to be executed requires a prisoner to have "a rational understanding of his conviction, his impending execution, and the relationship between the two." Stated differently, under *Panetti*, execution is not forbidden so long as the evidence

[7] In adopting Justice Powell's view in *Van Tran*, this Court rejected the "assistance prong" that requires a prisoner to possess the ability to assist counsel in his or her defense at the competency-to-be-executed stage. *Van Tran*, 6 S.W.3d at 265-66 (explaining that this more stringent prong is used to determine competency to stand trial or to plead guilty in Tennessee). In his trial court memorandum, Mr. Black suggests, in passing, that the Court should now add the assistance prong to our competency-to-be-executed competency standard. We decline to do so.

> shows that the prisoner does not question the reality of the crime or the reality of his punishment by the State for the crime committed.

Id. at 295 (citations omitted) (incorporating the *Panetti* competency standard into the *Van Tran* proceeding). The Court is also mindful of *Madison v. Alabama*, 586 U.S. 265 (2019), in which the United States Supreme Court noted that, regardless of the cause of the inmate's mental state, "the sole inquiry [under *Panetti*] remains whether the [inmate] can rationally understand the reasons for his death sentence." *Id.* at 277 (considering whether dementia and other health ailments precluded the inmate's execution under *Panetti*).

In view of these controlling legal principles, we conduct our de novo review of Mr. Black's petition and accompanying documents.

III. Mr. Black's Petition

Mr. Black filed a twenty-seven page "Petition to Declare Byron Black Incompetent to be Executed." Notably, the petition does not allege that Mr. Black is incompetent under the standards articulated in *Van Tran*, *Irick*, *Panetti*, or *Madison*. Instead, Mr. Black's counsel asks that Mr. Black be declared incompetent to be executed under common law standards that prohibit execution of the *non compos mentis*, including "lunatics" and "idiots."[8] The petition includes Mr. Black's interpretation of these common law principles; describes Mr. Black's past and present physical and mental health conditions; and asserts that Mr. Black cannot be executed because he is an "idiot" at common law. Attached to the petition are twenty-five exhibits, most of which relate to Mr. Black's multi-year pursuit of his intellectual disability claim. For our purposes, much of the information is stale or does not support a claim that Mr. Black is not *presently* competent to be executed under the standard that governs this *Van Tran* proceeding. *See Van Tran*, 6 S.W.3d at 269. Most relevant to our inquiry are the recent reports of three mental health professionals – Dr. Lee Ann Preston Baecht, a board-certified forensic psychologist; Dr. Daniel Martell, a board-certified forensic psychologist/neuropsychologist; and Dr. Ruben C. Gur, a professor of neuropsychology. These are outlined below.

Dr. Lee Ann Preston Baecht

In a report dated May 28, 2025, Dr. Baecht indicated Mr. Black was referred to her by his defense counsel for a mental health evaluation to assess his competency to be

[8] As highlighted by the trial court, Mr. Black incorrectly stated in his petition that this Court remanded the case to the trial court for consideration of Mr. Black's competency-to-be-executed claim under *Ford v. Wainright* and the Eighth and Fourteenth Amendments. In fact, the record reflects that the remand orders referred to competency proceedings under *Van Tran*, *Irick*, and *Madison*.

executed. Dr. Baecht interviewed Mr. Black in a private visitation room at Riverbend Maximum Security Prison on May 14 (approximately 4 hours), on May 15 (approximately 2 hours), and on May 21, 2025 (approximately 1.5 hours). The report contained the following relevant summaries of the interviews:

> [First Interview] When asked if he had been assigned an execution date, Mr. Black correctly stated, "August 5." When asked what would happen on that date, he stated, "I will be put to death." When asked how, he stated, "some kind of protocol." . . . When asked why the [S]tate intended to execute him on August 5, he stated, "Because they think I committed murder." When asked, he correctly stated he was given the death sentence for the murder of the youngest victim."
>
> . . .
>
> [Second Interview] Consistent with his statements during our first clinical interaction, during our second interview, Mr. Black correctly recalled that he is scheduled to be executed on August 5 and that he was sentenced to death for the murder of Lakeisha. When asked about the potential methods of execution, he stated, "the protocol." However, he stated he was not certain what the protocol is, adding "I just hear people talking about it." He was aware that there was debate regarding the use of the protocol, adding that he had seen pictures of the last person executed, and "He turned blue and purple. The protocol didn't kill him, He suffered a lot." When asked if there was another potential method of execution in Tennessee, he correctly stated, "the electric chair, I think." He indicated he had not thought about which option he would choose.
>
> . . .
>
> [Third Interview] During our third clinical interaction, Mr. Black again correctly recalled that he had been convicted of murdering Angela Clay and her two daughters, Latoya and Lakeisha. He also correctly stated that he was scheduled to be executed on August 5, for the murder of Lakeisha. He correctly listed the two potential methods of execution in Tennessee as the electric chair and the "protocol," which he described as being "a liquid substance" that is "injected."

Dr. Baecht opined, based on a strict interpretation of the competency standard articulated by *Van Tran v. State*, *Ford v. Wainwright*, *Panetti v. Quarterman*, and *Madison v. Alabama*, that Mr. Black likely meets this "low bar" for competency to be executed because Mr. Black understands he is scheduled to be executed on August 5, 2025; recognizes that death is permanent; and understands the State seeks to execute him for the murder of

Lakeisha Clay.

Dr. Daniel A. Martell

In a report dated May 27, 2025, Dr. Martell, who had previously evaluated Mr. Black for intellectual disability in 2020, indicated he had re-examined and re-tested Mr. Black at the request of Mr. Black's counsel on April 28, 2025, at Riverbend. Dr. Martell was not asked to evaluate or to opine on Mr. Black's present competency to be executed under the *Panetti* standard. Instead, defense counsel presented Dr. Martell with the following referral questions focused on Mr. Black's argument that the common law prohibits execution of the "*non compos mentis*":

> 1. Based upon your most recent assessment of Mr. Black, do you continue to hold your opinion that Mr. Black is intellectually disabled? Please supply the basis for your opinion.
>
> 2. Please describe any changes in Mr. Black's condition since you previously assessed him 2019 and the basis for your conclusions.
>
> 3. Please describe any deficits that Mr. Black exhibits with respect to memory, linguistic fluency, and cognitive functioning.
>
> 4. Please describe your conclusions regarding Mr. Black's ability to manage his own affairs, with a particular focus on his ability to manage financial affairs and his ability to live independently.
>
> 5. At common law, an individual was categorically exempt from execution if he or she was found to be *non compos mentis*. Does Mr. Black meet the following criteria for being non compos mentis?
>
> > a. An idiot is an individual who exhibits low intellectual functioning from nativity and who is incapable of managing his affairs.
> >
> > b. A person is *non compos mentis* if by reason of disease, accident, or other mental condition loses memory and understanding such that he is incapable of managing his own affairs.
>
> 6. Please describe the symptoms associated with profound intellectual disability. In your opinion, would such an individual be capable of planning and committing a homicide?

Dr. Martell's report concludes that Mr. Black meets the criteria for being "*non compos mentis*," and reiterates his own earlier opinion that Mr. Black is intellectually disabled.

Dr. Ruben C. Gur

In a final report dated May 28, 2025, Dr. Gur interpreted structural and functional neuroimaging data from magnetic resonance imaging (MRI) and positron emission tomography (PET) scans taken in May 2022. According to the report, the structural neuroimaging findings "show 'brain dysfunction' that may impair Mr. Black's ability to integrate information and base decisions on intact reasoning . . . ." He opined that Mr. Black "likely experiences cognitive deficits, particularly in the context of executive and memory functions . . . ." Dr. Gur observed abnormalities in brain structure with changes over the decades that may suggest a neurodegenerative process, such as Alzheimer's disease or Parkinson's disease. However, Dr. Gur did not discuss how, if at all, these findings relate to Mr. Black's present competency to be executed. Dr. Gur also did not interview Mr. Black.

Trial Court's Decision

Upon review of the petition and attachments, the trial court assessed Mr. Black's competency claim under the *Panetti* standard. In its memorandum and order, the trial court emphasized that Mr. Black's own expert, Dr. Baecht, found him competent to be executed under this competency standard. The trial court further noted that Mr. Black's petition failed to assert that any alleged mental infirmity, in isolation or in combination, renders him incompetent to be executed under this competency standard. In conclusion, the trial court found that Mr. Black failed to make the necessary threshold showing under *Van Tran* that there is a genuine, disputed issue regarding his present competence to be executed such that a competency hearing was warranted. The trial court declined to consider Mr. Black's assertion of incompetency to be executed under the common law "idiocy" principle for "want of jurisdiction."

IV. Analysis

Mr. Black does not argue that he is incompetent to be executed under the standard we set forth in *Van Tran* and refined in *Irick* to ensure consistency with *Panetti*. Instead, he argues that his execution is prohibited because he satisfies the standard for "idiocy" under the common law. We begin by evaluating Mr. Black's petition under the *Panetti* standard that governs claims of incompetency in a *Van Tran* proceeding and conclude that his evidence fails to meet the *Panetti* standard. We then explain why, to the extent Mr. Black seeks to relitigate intellectual disability or argue for a new categorical exclusion from execution, his argument regarding common law idiocy is procedurally barred. Finally, we decline Mr. Black's request that we reconsider the standard for competency to be executed.

a. *Panetti* Competency Standard

In this *Van Tran* proceeding, Mr. Black was required to make a threshold showing that a genuine, disputed issue exists regarding his present competence to be executed under the *Panetti* standard. *See Van Tran*, 6 S.W.3d at 269; *Irick*, 320 S.W.3d at 295. A prisoner is presently incompetent if he does not have "a rational understanding of his conviction, his impending execution, and the relationship between the two." *Irick*, 320 S.W.3d at 295. We agree with the trial court that Mr. Black has failed to make a threshold showing that he is presently incompetent to be executed under this standard.

The most relevant evidence provided by Mr. Black consisted of the three recent expert reports summarized above. Mr. Black's own expert, Dr. Baecht, found him likely competent to be executed under the *Panetti* standard. The other two experts, Dr. Martell and Dr. Gur, did not expressly address the *Panetti* standard in their assessments, and neither expert undermined Dr. Baecht's assessment so as to create a genuine, disputed issue regarding Mr. Black's present competency to be executed. We review the question de novo, assuming for purposes of this appeal that the evidence submitted by Mr. Black would be found credible. We conclude that Mr. Black failed to make the requisite threshold showing to warrant an evidentiary hearing on his competence under *Van Tran*. Accordingly, we affirm the trial court on that issue.

b. Common Law Idiocy Argument

Mr. Black argues that he "meets the criteria for 'idiocy' at common law and therefore 'his execution would violate the Eighth Amendment's ban on cruel and unusual punishments." He insists he is *not* arguing that he is incompetent to be executed under the *Panetti* standard, but rather that the *Panetti* standard "is insufficient to provide the protections for 'idiots' that were available under the common law at the time of the Founding."

To the extent Mr. Black's argument about the common law is an attempt to relitigate his intellectual disability claim, that argument is procedurally barred. The trial court properly understood that it was required under our specific remand order to preside over a *Van Tran* proceeding under the competency standards enumerated by this Court in *Van Tran* and *Irick*. The narrow procedure we adopted in *Van Tran* was necessary because *Ford*-based incompetency claims are "generally not considered ripe until execution is imminent" and could not be effectively adjudicated under the Post-Conviction Act. *Van Tran*, 6 S.W.3d at 264; *see also Panetti*, 551 U.S. at 943 (noting that "*Ford*-based incompetency claims, as a general matter, are not ripe until the time has run to file a first federal habeas petition"). The procedure we adopted in *Van Tran* is thus limited to adjudicating *Ford*-based claims of incompetency grounded in insanity. As explained above, Mr. Black has not made the requisite showing that he is incompetent under the *Panetti* standard. Competency is the only claim he is entitled to assert in this proceeding.

Accordingly, the trial court properly declined to consider Mr. Black's common law idiocy argument because it fell outside the scope of the order remanding the case for a *Van Tran* hearing. *See Weston v. State*, 60 S.W.3d 57, 59 (Tenn. 2001) ("Neither a trial court nor an intermediate court has the authority to expand the directive or purpose of this Court imposed on remand.").

Moreover, Mr. Black has already litigated and relitigated his claim that he is intellectually disabled and therefore categorically ineligible for the death penalty. Those many efforts were all unsuccessful. *See Black v. State*, No. M2004-01345-CCA-R3-PD, 2005 WL 2662577 (Tenn. Crim. App. Oct. 19, 2005), *perm. app. denied* (Tenn. Feb. 21, 2006), *cert. denied*, *Black v. Tennessee*, 549 U.S. 852 (2006); *Black v. Colson*, No. 3:00–0764, 2013 WL 230664 (M.D. Tenn. Jan. 22, 2013), *aff'd sub nom.*, *Black v. Carpenter*, 866 F.3d 734 (6th Cir. 2017), *reh'g en banc denied* (6th Cir. Oct. 27, 2017), *cert. denied sub nom.*, *Black v. Mays*, 584 U.S. 1015 (2018); *see also Black v. State*, No. M2022-00423-CCA-R3-PD, 2023 WL 3843397 (Tenn. Crim. App. June 6, 2023), *no perm. app. filed*. Four different courts—a state trial court, the Court of Criminal Appeals, a federal district court, and the United States Court of Appeals for the Sixth Circuit—considered Mr. Black's intellectual disability claim on the merits and held that the proof failed to establish that he is intellectually disabled. He is not permitted to relitigate that issue at this late stage by shoehorning it into a *Van Tran* proceeding.

To the extent Mr. Black is arguing for a new categorical exclusion from execution that is distinct from incompetency under the *Panetti* standard or intellectual disability under *Atkins* and its progeny, he had ample opportunities to raise that argument at an earlier stage. *See Irick*, 320 S.W.3d at 297-98 (explaining that a *Van Tran* proceeding is not the proper proceeding to seek a new categorical exclusion because the proceeding is *sui generis* and not a trial). He did not do so.

And to the extent Mr. Black is asking this Court to reconsider the standard for competency to be executed, he offers no compelling reason for us to adopt a standard that differs from longstanding precedent from this Court and the United States Supreme Court. We respectfully decline to do so.

V. Application for a Stay of Execution

On June 23, 2025, Mr. Black filed an application for a stay of his execution scheduled for August 5, 2025. Tennessee Supreme Court Rule 12(4)(E) provides that this "Court will not grant a stay or delay of an execution date pending resolution of collateral litigation in state court unless the prisoner can prove a likelihood of success on the merits in that litigation." Tenn. Sup. Ct. R. 12(4)(E). Mr. Black asserts that he is entitled to a stay if he can show "more than a mere possibility of success" in the litigation and "the balance of equities tips in his favor." (quoting respectively *Irick*, 556 S.W.3d at 689; and *Ramirez v. Collier*, 595 U.S. 411, 421 (2022)). In his motion seeking a stay, he relies only on a

contention of success in the present appeal of the Petition before us. Because this Court has found Mr. Black unsuccessful in this appeal, he cannot demonstrate a likelihood of success. Accordingly, his application for a stay of his execution is respectfully denied.

CONCLUSION

For the reasons explained above, the trial court's judgment dismissing Mr. Black's petition to be declared incompetent to be executed is affirmed. This order is not subject to rehearing under Tennessee Rule of Appellate Procedure 39, and the Clerk is directed to certify this opinion as final and to immediately issue the mandate. As provided by this Court's order of March 3, 2025, the Warden of the Riverbend Maximum Security Institution, or his designee, shall carry out the execution of Byron Lewis Black in accordance with Tennessee law on the 5th day of August, 2025, unless a stay is entered by this Court or by a federal court. Counsel for Byron Lewis Black shall provide to the Office of the Appellate Court Clerk in Nashville a copy of any order of stay. The Clerk shall expeditiously furnish a copy of any stay order to the Warden of the Riverbend Maximum Security Institution.

This order is designated for publication pursuant to Tennessee Supreme Court Rule 4.

PER CURIAM