

**IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO**

STATE OF OHIO,

Respondent,

-vs.-

DAVID BRADEN,

Petitioner.

Case No. 98 CR 004601

Judge Colleen O'Donnell

POSTCONVICTION PETITION

This is a capital case.

**DAVID BRADEN'S UNOPPOSED PETITION FOR POSTCONVICTION RELIEF
DUE TO SERIOUS MENTAL ILLNESS AT THE TIME OF OFFENSE**

Now comes Petitioner, David Braden, by and through undersigned counsel, and petitions this Court for postconviction relief on the ground that he had a serious mental illness at the time of the aggravated murders of which he was convicted and sentenced to death. R.C. § 2953.21(A)(1)(a)(iv). He therefore respectfully requests that this Court declare his death sentences void. The State agrees with, and does not oppose, the relief requested herein.

CASE HISTORY

Trial:

Disposition:

Charges (including specifications):

Count 1

Aggravated Murder: R.C. 2903.01

Specifications:

- (1) R.C. 2929.04 (A)(5) -Course of conduct involving the purposeful killing of or attempt to kill two or more persons; and
- (2) R.C. 2941.145 - Committed while possessing a firearm

Guilty: Death

3 years on firearm specification

Count 2

Aggravated Murder: R.C. 2903.01

Specifications:

- (1) R.C. 2929.04(A)(5) - Course of conduct involving the purposeful killing of or attempt to kill two or

Guilty: Death

3 years on firearm specification -
merged with firearm specification
on Count 1

more persons; and
(2) R.C. 2941.145 - Committed while possessing a firearm

Date Sentenced: June 16, 1999

Name of Attorneys: Thomas D. Beal and Phillip Lon Allen

Was this conviction the result of a: Guilty Plea No Contest **Trial**

If the conviction was the result of a trial, what was the length of the trial? 10 days

Appeal to Court of Appeals: N/A

Appeal to Supreme Court of Ohio:

Number or citation: 99-1452

Disposition: Affirmed

Name of attorney(s): W. Joseph Edwards and Brian Rigg

HAS A POSTCONVICTION PETITION BEEN FILED BEFORE IN THIS CASE?

☒ YES ☐ NO

OTHER RELEVANT CASE HISTORY:

AUTHORITY TO FILE NEW POSTCONVICTION PETITION

This is a petition for postconviction relief filed under the authority of R.C. § 2953.21(A)(1)(a)(iv) on the ground that Petitioner had a qualifying serious mental illness at the time of the offense. This is a new form of postconviction relief created by House Bill 136, which became effective on April 12, 2021. A petition under this new provision “shall be filed not later than three hundred sixty-five days after the effective date of this amendment.” R.C. § 2953.21(A)(2)(b). Therefore, the instant petition is timely.

STATEMENT OF FACTS

David Braden suffers from a “serious mental illness” as defined by R.C. § 2929.025(A)(1). He was diagnosed with paranoid schizophrenia with delusions. Petitioner suffered from this condition before and at the time of the commission of the crimes at issue in this case.

Mr. Braden was charged with two counts of aggravated murder, together with specifications for multiple victims and the use of a firearm. Mr. Braden was found guilty of all charges and specifications and sentenced to death on both counts.

As established in this Petition, Mr. Braden’s mental illness satisfies the standard in the Serious Mental Illness statute, R.C. § 2929.025, and he must be resentenced to life without parole on both counts.

STATEMENT OF LAW

Ohio law now prohibits the execution of persons with serious mental illnesses. The Governor signed House Bill 136 into law effective April 12, 2021. Under the new law, the State may not execute a person if (a) the person has been diagnosed with one of the four enumerated mental illnesses (“diagnosis prong”), and (b) at the time of the offense, the mental illness “significantly impaired the person’s capacity to exercise rational judgment in relation to the person’s conduct” with respect to either conforming their conduct to the requirements of the law or appreciating the nature, consequences, or wrongfulness of the person’s conduct (“impairment prong”). R.C. § 2929.025(A)(1).

A person with a serious mental illness, as defined above, who was sentenced to death, is eligible for postconviction relief under R.C. § 2953.21(A)(1)(a)(iv). A person sentenced to death who files a petition under R.C. § 2953.21(A)(1)(a)(iv) may ask the court to render void the sentence of death and to order the resentencing of the person under R.C. § 2929.06(A). R.C. §

2953.21(A)(3)(b). If a person sentenced to death files such a petition and asks this court to render void the sentence of death and to order the resentencing under R.C. § 2929.06(A), the act of filing the petition constitutes a waiver of any right to be sentenced under the law that existed at the time the offense was committed and constitutes consent to be sentenced to life without parole under R.C. § 2929.06(A).

The Petitioner has the burden of proving the diagnosis and impairment prongs by a preponderance of the evidence. R.C. § 2929.025(D). “[A] preponderance of evidence means the greater weight of evidence. The greater weight may be infinitesimal, and it is only necessary that it be sufficient to destroy the equilibrium.” *State v. Stumpf*, 32 Ohio St.3d 95, 102 512 N.E.2d 598, 606 (1987) (quotation and alteration omitted). If the Petitioner meets that burden, the Court must void the sentence of death and resentence the Petitioner to life imprisonment without parole. R.C. §§ 2929.06(A)(2); 2953.21(H). Unlike in a typical postconviction petition, the Petitioner does *not* need to show constitutional error or prejudice. In the instant case, the State agrees that Petitioner has produced sufficient evidence to prove the diagnosis and impairment prongs by a preponderance of the evidence. Accordingly, the State concurs with Petitioner’s request for relief.

A person meets the diagnosis prong of the serious-mental-illness exemption if he or she has been diagnosed with one of the following mental illnesses: schizophrenia, schizoaffective disorder, bipolar disorder, or delusional disorder. *Id.* § 2929.025(A)(1)(a).

A person meets the impairment prong of the serious-mental-illness exemption if the mental illness impaired his or her capacity to exercise rational judgment at the time of the offense. *Id.* § 2929.025(A)(1)(b). Specifically, the person must show that the mental illness “significantly impaired the person’s capacity to exercise rational judgment in relation to the person’s conduct

with respect to either of the following: (i) conforming the person’s conduct to the requirements of law; [or] (ii) appreciating the nature, consequences, or wrongfulness of the person’s conduct.” *Id.*

Mr. Braden had a serious mental illness at the time of the crime under § 2929.025(A)(1), and therefore this Court must declare his death sentences void and resentence Mr. Braden to life without parole on both counts. R.C. § 2929.06(A)(2).

FIRST GROUND FOR RELIEF

1. Mr. Braden’s death sentences are void because he satisfies both the diagnosis and impairment prongs of the serious-mental-illness requirements under § 2929.025(A)(1)(b)(i). Ex. A.

2. After clinical interviews, psychological testing and review of records, Dr. Kathleen Burch diagnosed Mr. Braden with paranoid schizophrenia prior to and at the time of the crime. Tr. Vol. 9, p. 163, 201, 222, 263, Evid. Hg. Tr. 78. This satisfies the diagnosis prong under R.C. § 2929.025(A)(1)(a)(i).

3. Dr. Burch testified that at the time of the offense, Mr. Braden’s paranoid schizophrenia significantly impaired his capacity to exercise rational judgment in relation to his conduct with respect to conforming his conduct to the requirements of the law. Evid. Hg. Tr. p. 79. This satisfies the impairment prong under R.C. § 2929.025(A)(1)(b)(i).

4. Dr. Burch established that paranoid schizophrenia is a type of schizophrenia that involves several symptoms. These symptoms include loose associations, which means an inability to string thoughts logically together. Tr. Vol. 9, p. 202. Another symptom is the person will “show severe illogic in their thinking.” *Id.* There tends to be a later onset of the illness. *Id.* They will tend to have hallucinations or delusions. *Id.* at 203. They will be “very guarded and evasive and not want to talk to people very much about what is going on inside them.” *Id.* The person’s “delusional

symptom may not be apparent until someone really gets to know the person, or in their close relationships, or if the person is under a great deal of stress.” *Id.* They tend to believe that they are being persecuted and also that they are somehow special. *Id.* They may be able to function but will not have many friends because they are intimidating to others. *Id.* at 203-04. They also tend to “decompensate under great stress.” *Id.* at 204.

5. Mr. Braden possessed all of these symptoms. He was intimidating, decompensated under stress, had delusions in the form of believing he was a prophet of God. *Id.* at 204, 206-07. His delusions were not readily apparent to Dr. Burch until Mr. Braden was decompensating under stress and Dr. Burch knew him a little better. *Id.* at 210.

6. Mr. Braden’s brother, John Pancake, and sister-in-law, Kim Pancake, testified that Mr. Braden made statements about being a prophet of God since the early to mid-1990s. Tr. Vol. 9, pp. 37, 56.

7. Friends of Mr. Braden attested to his paranoia and personality changes. James Gantt noted that over the years Mr. Braden became more paranoid and he could hardly recognize Mr. Braden the last few times he saw him before the crime. PC Ex. 10, ¶¶5, 14, filed 6/9/2000. Karl Jeney similarly stated that Mr. Braden was not very stable and did not seem to be in touch with reality prior to the crime. PC Ex. 11, ¶¶8, 10, filed 6/9/2000.

8. The testing administered to Mr. Braden, the records reviewed and the interviews with witnesses were relied on by Dr. Burch to make the diagnosis of paranoid schizophrenia for Mr. Braden. *Id.* at 201. And the paranoid schizophrenia significantly impaired Mr. Braden’ ability to conform his conduct to law. Evid. Hg. at 79.

9. Since being incarcerated, Mr. Braden has been, and still is, treated with the anti-psychotic medication Zyprexa to help control his psychotic symptoms. Ex. B.

10. Mr. Braden meets the statutory requirements for a serious mental illness at the time of the crime by a preponderance of the evidence under R.C. § 2929.025. Therefore, this Court must declare his sentence void and resentence him to life without parole under § 2929.06(A)(2).

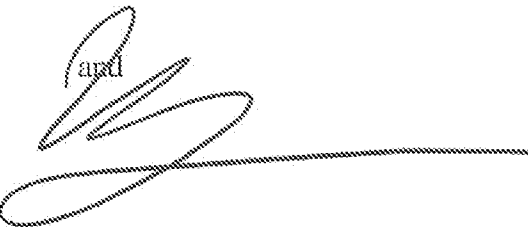
CONCLUSION

Wherefore, Mr. Braden, with the agreement of the State of Ohio by the Franklin County Prosecutor's Office, requests that this Court void his death sentences and resentence him to life without parole on both counts under R.C. § 2929.06(A), pursuant to R.C. § 2953.21(A)(3)(b).¹

Respectfully submitted,

Office of the Ohio Public Defender

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COUNSEL FOR PETITIONER

¹ Should this Court grant this Petition and resentence Mr. Braden to life without parole, Mr. Braden, through counsel, will file a motion with the federal district court in case no. 2:04-cv-842 dismissing Mr. Braden's habeas litigation forthwith.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **DAVID BRADEN'S UNOPPOSED PETITION FOR POSTCONVICTION RELIEF DUE TO SERIOUS MENTAL ILLNESS AT THE TIME OF OFFENSE** was served by electronic mail on June 16, 2021, to Seth Gilbert, Chief Counsel, Criminal Division of the Franklin County Prosecutor's Office at sgilbert@franklincountyohio.gov.

By: /s/ Kathryn L. Sandford
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