

IN THE  
INDIANA SUPREME COURT

No. 24S-SD-222

JOSEPH E. CORCORAN,  
*Appellant-Defendant,*

v.

STATE OF INDIANA,  
*Appellee-Plaintiff.*

Appeal from the  
Allen Superior Court 4,

No. 02D04-9707-CF-465,

The Honorable Frances C. Gull,  
Judge.

**REPLY TO RESPONSE TO MOTION TO SET EXECUTION DATE**

Corcoran provides this Court no valid ground to deny the State's motion to set an execution date. The Indiana Code and criminal rules mandate this Court set an execution date. To the extent Corcoran has signaled his intent to engage in future litigation, Corcoran has not taken the necessary steps as contemplated by statute or criminal rules to prevent this Court from following what the law requires it to do. Corcoran's complaints and request for an indeterminate time to conduct an undefined investigation into the State's execution protocol or procurement of pentobarbital are not presented within the correct legal framework to prevent the setting of an execution date. This Court should grant the State's motion.

**A. The law requires this Court to set an execution date.**

The only issue before this Court is the State's request that this Court fulfill its statutory duty to set an execution date. Indiana Code Section 35-50-2-9(h) requires this Court to "order a new date for the defendant's execution" after the lifting or expiration of a stay of execution. This Court's rules require the same: "[T]he Supreme Court must order the new execution date when the stay is lifted."

Ind. Criminal Rule 6.1(G). Currently, there is no active litigation or stay of the execution date, and therefore the rules require this Court to order a new execution date. All the State's motion is seeking is an order complying with the law.

Corcoran does not respond to this straightforward request. He does not acknowledge this Court's legal duty to set an execution date for a person sentenced to death when no stay is pending. He neither cites nor discusses the statute and rule upon which the State's motion is based. And he provides no legal authority for this Court to disregard its duty to set an execution date. This Court should follow the law and grant the State's motion.

**B. This is not the proceeding to consider Corcoran's complaints.**

This proceeding is neither the time nor the place for this Court to consider the arguments in Corcoran's response. This Court has no jurisdiction to grant the relief that he requests. The Indiana Constitution states that this Court "shall have no original jurisdiction except" in those matters specifically enumerated in Article 7, Section 4. Corcoran's requests for sweeping relief in this Court do not fall within any category of this Court's original jurisdiction. His claims do not invoke this Court's authority to regulate the practice of law, and he does not invoke this Court's supervisory authority over the other courts of the State. *See* Ind. Original Actions Rule 1. This Court "shall exercise appellate jurisdiction under such terms and conditions as specified by rules except that appeals from a judgment imposing a sentence of death shall be taken directly to the Supreme Court." Ind. Const. art. 7, § 4. Direct appellate review of Corcoran's sentence concluded two decades ago.

*Corcoran v. State*, 774 N.E.2d 495 (Ind. 2002), *reh’g denied* (2003). This is not an appeal from a final judgment, and Corcoran’s ability to appeal any prior final judgment in this case has expired (*see* Mtn. to Set Execution Date 1–3). *See* Ind. Appellate Rules 4(A)(1)(a), 9(A). This Court has no authority—and Corcoran offers no source for such authority—to adjudicate the claims he has raised in opposition to the State’s primarily administrative request for this Court to follow the law and set an execution date.

**1. To again attack his sentence, Corcoran must seek permission and prove new evidence warrants additional litigation.**

Corcoran asks this Court to forego its legal duty to enforce his sentence without acknowledging or pursuing any cognizable legal process for attacking the validity of that sentence. Corcoran long ago exhausted his legal challenges to his convictions and sentence (*see* Mtn. to Set Execution Date 1–3). Yet in his response, he asks this Court to proclaim new bounds on the constitutionality of the death penalty in this State (despite multiple unsuccessful prior attacks on the constitutionality of Indiana’s death penalty, *Corcoran v. State*, 739 N.E.2d 649, 651–54 (Ind. 2000)), and to declare his sentence inappropriate under Appellate Rule 7(B) (even though this Court previously found it was not manifestly unreasonable under that rule, *Corcoran*, 774 N.E.2d at 501–02). He claims this extraordinary reversal is warranted by intervening changes in the law and an allegedly significant decline in his mental health. But he provides no evidence of these changed circumstances and does not seek the opportunity to prove these allegations in a trial court.

Corcoran may only attack his sentence through a successive petition for post-conviction relief, and he must obtain permission from this Court to make that challenge. After exhausting the single opportunity for post-conviction relief provided by right, a defendant who wants to challenge his death sentence based on new evidence, including a claim that his present mental condition makes it unconstitutional to execute him, must seek permission to file a successive petition for post-conviction relief. Ind. Code § 35-50-2-9(k); Ind. Post-Conviction Rules 1(1)(e) & 1(1)(12); *see also Overstreet v. State*, 993 N.E.2d 179, 180 (Ind. 2013) (holding any attempt to challenge a death sentence based on new evidence after completing post-conviction proceedings requires permission to file a successive petition). To obtain permission to file a successive petition for post-conviction relief, a petitioner bears the burden to establish a “reasonable possibility” that he is entitled to post-conviction relief. P-C.R. 1(12)(b); *Timberlake v. State*, 858 N.E.2d 625, 627 (Ind. 2006). To decide if a petitioner has met that threshold, this Court considers the applicable law, the record of prior appeals, and any other materials the Court deems relevant. *Timberlake*, 858 N.E.2d at 627. If the Court finds the threshold met and authorizes the petition, then the case returns to the trial court to be litigated pursuant to Post-Conviction Rule 1. *Id.*

Rather than pursue this established, legitimate way to present his claims, Corcoran spends the bulk of his response arguing that it should be unconstitutional to execute someone who is “seriously mentally ill,” which he claims to be (Resp. 1–19). But even assuming that is the case (which the State does not concede), both

this Court and the U.S. Supreme Court have declined to find that the existence of mental illness alone precludes execution. *See Madison v. Alabama*, 586 U.S. 265, 267 (2019) (holding the Eighth Amendment does not forbid execution of a prisoner with “a mental disorder that has left him without any memory of committing his crime”); *Matheney v. State*, 833 N.E.2d 454, 456–58 (Ind. 2005) (denying permission to file a successive petition for post-conviction relief because the Court found no “reasonable possibility of relief” for Matheney’s argument that “a death sentence for a person who was mentally ill when committing murder now violates Article 1, Section 16 of the Indiana Constitution”). And this constitutional conclusion does not change by recognizing that some other states’ legislatures have made decisions about death-penalty eligibility, as Corcoran notes (Resp. 15–16), that our General Assembly has not.

The relief Corcoran seeks can only be obtained, if at all, through post-conviction relief, but he makes no effort to address the likelihood that he would prevail on such claims. Corcoran does not argue that he is ineligible to be executed under currently existing legal standards such as a claim that his mental illness is so severe that it prevents him from currently understanding the punishment he will suffer and why. *See generally Panetti v. Quarterman*, 551 U.S. 930 (2007); *Ford v. Wainwright*, 477 U.S. 399 (1986). Rather, he seeks to have this Court declare a new constitutional rule and immediately apply it to him without the benefit of additional evidence or the refinement of issues vetted through a lower court. This Court must decline that invitation.

Likewise, this Court should reject Corcoran’s unprecedented request that his sentence be revised as an exercise of original jurisdiction in this proceeding. He contends that this Court should re-consider revising his sentence under Appellate Rule 7(B) because, in part, “his mental state has declined significantly” (Resp. 16). Again, the proceeding before this Court is not a criminal appeal in which the appropriateness of his sentence is up for consideration. *See* Ind. Const. art. 7, § 4; App. R. 7(B). This Court has already reviewed Corcoran’s sentence under its Rule 7(B) authority and did not ignore his mental health in the process: When it previously denied relief under Rule 7(B), this Court recognized the trial court’s “understandable concern” with Corcoran’s mental-health diagnoses, but it was “satisfied ... that a quadruple killing was weightier than the proffered mitigation of Corcoran’s mental health.” *Corcoran*, 774 N.E.2d at 501–02. Corcoran provides no evidence to support his claim that his present mental condition has severely deteriorated and does not seek permission to pursue the process that would permit him to provide the Court that information if it exists.

Neither of Corcoran’s attacks on his sentence should prevent this Court from scheduling an execution date as required by law. His reasons to indefinitely and permanently prevent the setting of a lawful execution date are not presented in the correct legal framework and are irrelevant to the limited question raised by the State’s motion. If he would like to litigate these issues and have briefing, as he requests (Resp. 18), he can raise his claims through proper legal channels, which he has not done. *See* P-C.R. 1(12).

**2. Corcoran must avail himself of existing legal procedures to obtain information or explore concerns regarding the execution protocols.**

Again without offering any legal authority or framework, Corcoran asks this Court to indefinitely delay scheduling execution until he receives an amorphous list of information related to the execution process. Well-established legal procedures exist for Corcoran to seek information about or litigate challenges to the execution process. *See* I.C. ch. 5-14-3; *Hill v. McDonough*, 547 U.S. 573, 583 (2006) (outlining the conditions under which the method of execution may be challenged under 42 U.S.C. § 1983 rather than a habeas petition); *see also Barr v. Lee*, 591 U.S. 979, 979–81 (2020) (denying request for a stay so that prisoners could litigate a challenge to the use of pentobarbital in their executions). Corcoran has legal process available to address his concerns but has not availed himself of it.

If Corcoran wishes to stay execution so that he may challenge the method of execution, he must file a lawsuit. But “like other stay applicants, inmates seeking time to challenge the manner in which the State plans to execute them must satisfy all of the requirements for a stay, including a showing of a significant possibility of success on the merits.” *Hill*, 547 U.S. at 584. Stay requests have certain legal requirements, and Corcoran has done nothing to attempt to satisfy those requirements. In fact, from his response, he seems to believe he can make a bare request for some time to do some investigation. That is not the case. *Id.* Proper legal channels are available for Corcoran to attempt to delay his execution. He has not invoked them, and his generic objection to the State’s motion does not serve as a proper invocation.

**3. This Court should not grant Corcoran's request for indefinite delay.**

Corcoran's *pro forma* request for a stay to investigate is insufficient to preclude this Court from performing its duty and setting an execution date. Though he does not actually request a stay of execution, he argues that an execution date should not be set until he is given some "time ... to investigate" the drug to be used to execute him and other procedures (Resp. 2–19). But he does not specify how much time he seeks or what investigation he intends to complete. This Court should reject Corcoran's request for an indefinite *de facto* stay.

Should Corcoran choose to initiate litigation challenging his convictions, sentence, or the method of execution and seek a stay, the State will address those discrete claims in kind. It is impossible to fully or fairly address the appropriateness of a stay or the reasonable duration of any other delay until Corcoran chooses to initiate cognizable legal proceedings. Indiana law tasks the courts with ensuring litigation in death penalty cases proceeds in a timely manner toward an execution date. It requires the trial court to immediately set an initial date of execution, priority treatment of capital appeals by this Court, strict time limits for action on post-conviction petitions, and that a new execution date be set by this Court whenever a stay is lifted. *See* I.C. § 35-50-2-9(h)–(j). Consistent with the law's demand for timely process, this Court should set an execution date. However, if this Court chooses to provide Corcoran a brief delay to allow him to file further litigation, either in this Court or a trial court, the State respectfully requests a clear



deadline for that request within a short period of time to minimize delay in scheduling an execution date.

### **CONCLUSION**

This Court should grant the State's motion. Should Corcoran initiate active litigation challenging his sentence or the method of execution and seek a stay of the execution date, the State will address those challenges. However, if this Court chooses not to set an execution date to give Corcoran time to file further litigation, the State respectfully requests that this Court set an expedited case-management schedule to reduce unnecessary delay.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 19, 2024, I electronically filed the foregoing document using the Indiana E-Filing System ("IEFS"). I also certify that this document was served July 19, 2024, upon opposing counsel via IEFS:

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