SINGLETON V. NORRIS: THE EIGHTH CIRCUIT MANEUVERED AROUND THE CONSTITUTION BY FORCIBLY MEDICATING INSANE PRISONERS TO CREATE AN ARTIFICIAL COMPETENCE FOR PURPOSES OF EXECUTION

INTRODUCTION

The argument against involuntary medication stems from the belief that defendants have certain constitutional rights even while imprisoned and especially while awaiting execution.1 These constitutional rights encompass, among other things, the First Amendment right to communicate, especially with counsel; the right of the mentally ill to avoid execution pursuant to the Eighth Amendment; and Fourteenth Amendment due process rights.2 Opponents to the administration of drugs to inmates or detainees awaiting trial argue psychotropic drugs may interfere with a prisoner’s ability to exercise these rights because the drugs may cause sedation, produce anxiety, diminish awareness of events happening in the surrounding environment, and cause involuntary muscle movement.3 Due to this state of medicated sedation and the masking but not curing of the underlying symptoms, critics of forced medication, for purposes of execution, argue restored competence is merely artificial.4 As a result, an individual whose competency is restored through forced medication is no more competent than before the administration of the treatment.5 Thus, although the Constitution allows forced medication, a judge should not use the artificial competency the medication creates to determine the competence of an insane prisoner awaiting execution.6

In Singleton v. Norris,7 the Eighth Circuit weighed a prisoner’s interest in avoiding forced medication against the government’s inte-
est in rendering an inmate competent for execution. In 1979, the State of Arkansas sentenced Charles Singleton ("Singleton") to life imprisonment for robbery and sentenced Singleton to death for a murder related to the robbery. During his imprisonment, Singleton exhibited signs of mental illness and, as a result, the state forcibly administered antipsychotic medication to Singleton in 1997. Singleton argued his mental incompetence, void of medication, should lead to a stay of execution. The United States Court of Appeals for the Eighth Circuit determined the Constitution and Supreme Court precedent permitted two things. First, the Eighth Amendment allowed the execution of those who had knowledge of their impending execution and the reasons for such a sentence. Second, the state may forcibly medicate mentally incompetent prisoners in an effort to protect the prisoner, other inmates, and prison property. Therefore, the Eighth Circuit opined a state does not encroach upon the Eighth Amendment when it executes an incompetent death row prisoner who regained competency through appropriate medical treatment.

This Note will examine whether forced administration of antipsychotic drugs before execution, for the partial purpose of rendering an individual competent for execution, violates a prisoner’s constitutional rights. The Note will begin by reviewing the facts and holding of Singleton. Next, this Note will examine prior case law which examined the constitutional rights of prisoners awaiting execution, the constitutional rights of prisoners subject to forced medication, and the government’s justification for carrying out a lawfully imposed sentence of execution. Next, this Note will analyze how the courts should define insanity. The Analysis will continue by examining the Eighth Amendment’s ban on executing the insane. The Analysis will close with a discussion of artificial competency. In conclusion, this Note will argue the Eighth Circuit’s medicate-to-execute philosophy, established in Singleton, contradicted precedent and common

9. Singleton, 319 F.3d at 1020.
10. Id. at 1021.
11. Id.
12. Id. at 1018, 1027.
13. Id. at 1027.
14. Id.
15. Id. at 1018, 1027.
16. See infra 284-434 and accompanying text.
17. See infra 23-108 and accompanying text.
18. See infra 109-283 and accompanying text.
19. See infra 299-344 and accompanying text.
20. See infra 345-98 and accompanying text.
21. See infra 399-434 and accompanying text.
law, which protected the insane from execution while in a state of artificial competence.  

FACTS AND HOLDING

In Singleton v. Norris, Judge Paul Roberts of the circuit court in Ashley County, Arkansas convicted and sentenced Charles Singleton ("Singleton") to death for capital felony murder. In addition to receiving the death penalty, Singleton received a sentence of life imprisonment for aggravated robbery related to the incident. Chief Judge Adkisson of the Arkansas Supreme Court set aside the robbery conviction while affirming the murder conviction and the death sentence because Singleton failed to show the trial court had committed reversible error in selection of the jury and denying Singleton's hearsay objections. After the Arkansas Supreme Court denied Singleton's post-conviction relief, the state set his execution date for June 4, 1982.

Under a writ of habeas corpus, Singleton petitioned the District Court for the Eastern District of Arkansas for a stay of execution. Singleton argued ineffective counsel, invalid aggravating factors, and incompetence, claiming the state should order a stay of execution because of his mental condition. Chief Judge Garnett Eisele, writing for the court, stated the use of pecuniary gain as an aggravating factor of the murder replicated a factor in the underlying robbery charge and therefore, the court could not use this double jeopardy type situation to impose the death penalty on Singleton. Thus, the court granted Singleton's petition and reversed the death sentence; however, the court sustained the conviction. Singleton and the state both appealed the district court's decision to the United States Court of Ap-

22. See infra 284-434 and accompanying text.
23. 319 F.3d 1018 (8th Cir. 2003).
24. Singleton v. Norris, 319 F.3d 1018, 1020 (8th Cir. 2003). Charles Singleton ("Singleton") stabbed Mary Lou York in the neck twice while supposedly robbing a grocery store. Id. at 1020-21. While York was awaiting an ambulance, she told a police officer at the scene that Singleton had stabbed her; she repeated this to her personal physician on the way to the hospital. Id. Two other witnesses at the scene of the crime confirmed seeing Singleton enter and exit the grocery store where the stabbing occurred. Id. York died as a result of her wounds. Id.
25. Singleton, 319 F.3d at 1020.
27. Id.
28. Id.
31. Singleton, 319 F.3d at 1021.
peals for the Eighth Circuit. Singleton argued ineffective assistance of counsel and unfair jury selection. The state argued the district court erred in disallowing a retrial of Singleton's penalty phase after the district court's decision. The United States Court of Appeals for the Eighth Circuit upheld the conviction but overruled the stay of execution, finding Singleton's claim unsuccessful because he failed to show prejudice existed at his trial. On remand, Singleton again argued ineffective assistance of counsel at the penalty phase and argued the Arkansas death penalty was unconstitutional. The district court reinstated the death penalty and Singleton again made an appeal to the Eighth Circuit. Circuit Judge Roger Wollman of the Eighth Circuit affirmed the district court's decision, contending Singleton received adequate assistance of counsel at the penalty phase because he had waived his right to present the mitigating evidence he claimed his attorney failed to put forward during the trial.

In 1992, Singleton filed a declaratory judgment action in an Arkansas trial court to contest his execution on the grounds that he was mentally incompetent and that the state violated his constitutional rights by medicating him to make him seem competent. Singleton argued the state should allow him to discontinue his medication to demonstrate his incompetence, thus proving the state's inability to execute him. The trial court denied the motion and the Arkansas Supreme Court affirmed, explaining that Singleton never argued forcible medication violated his rights and thus, he was not entitled to a sanity commission. In 1993, Singleton filed a second writ of habeas corpus arguing the state could not execute him, under the United States Supreme Court ruling in *Ford v. Wainwright*, because of his incompetence. On appeal from the district court's dismissal of the petition, Singleton admitted the antipsychotic medication he voluntarily took

32. Singleton v. Lockhart, 871 F.2d 1395, 1397 (8th Cir. 1989).
33. *Singleton*, 871 F.2d at 1397.
34. *Id.*
35. *Id.* at 1400.
37. *Id.* at 1021. *See also* Singleton v. Lockhart, 962 F.2d 1315, 1316 (8th Cir. 1992).
38. *Singleton*, 319 F.3d at 1018, 1021. Singleton primarily argued ineffective assistance of counsel on appeal. *Id.* *See also* Lockhart, 962 F.2d 1315, 1316 (8th Cir. 1992).
40. *Singleton*, 319 F.3d at 1021.
41. *Id.* *See also* Endell, 870 S.W.2d 742 (Ark. 1994).
42. 477 U.S. 399 (1986).
43. *Singleton*, 319 F.3d at 1021.
made him competent. The Eighth Circuit affirmed the district court's dismissal. After a review panel of medical experts determined Singleton posed a risk to himself and others, the state started Singleton on an involuntary medical treatment regime. In January 2000, the state set Singleton's execution for March 1, 2000. Singleton contested the state's action by filing another petition of habeas corpus in the district court, contending the state could not forcibly render him competent and thereafter execute him. Denying the petition, the district court reasoned there was no evidence the medical personnel intended to forcibly medicate Singleton in order to render him competent, a prerequisite for execution, but instead medicated Singleton for his own safety.

Singleton appealed the district court's decision to the Eighth Circuit, arguing the state could not forcibly medicate him and then contend he had met the competency level required for execution. The Eighth Circuit granted a stay of execution requesting that the district court certify two questions for the appeal. The Eighth Circuit asked the district court to discuss Singleton's competency prior to the forced medication order in 1997 and whether Singleton would remain competent without the involuntary medication. The district court found Singleton was not competent when the involuntary medication regime started in 1997. The court responded to the second question by explaining, without medication, Singleton would revert back into psychosis; however, the court could not declare when or how incompetent Singleton would become. Since 2000, Singleton had taken his medication voluntarily; however, during the appeal the Eighth Circuit noted that, should Singleton refuse medication and the state forcibly administer antipsychotic medication thereafter, Singleton's could revive his claim. Thus, the Eighth Circuit opined it would hear Singleton's claim on the merits because the claim was likely to recur in

44. Id.
45. Id.
46. Id. Due to the forced medication, Singleton's psychotic episodes subsided. Id.
47. Singleton, 319 F.3d at 1021.
48. Id.
49. Id. at 1021-22.
50. Id. at 1018, 1021-22.
51. Id. at 1018, 1022.
52. Id.
53. Id.
54. Id.
55. Id. The court noted that a controversy remained although the Harper's involuntary medication order had already lapsed. Id.
the future, even though Singleton was currently taking his medication voluntarily.56

The state argued Singleton could not bring a second petition for habeas corpus, under a *Ford*-derivative claim, because 28 U.S.C. § 2244 barred such actions.57 The Eighth Circuit explained, under 28 U.S.C. § 2244, an unripe habeas corpus petition previously brought before the court did not bar successive claims.58 In 1995, Singleton took his medication on a voluntary basis and thus, his habeas corpus claim did not actually arise until 1997 when the state placed Singleton on an involuntary medication regime.59 The Eighth Circuit concluded Singleton's claim could not have arisen until the state set his execution date and subjected him to involuntary medication.60

The Eighth Circuit next turned to review the constitutionality of making Singleton competent for execution through involuntary medication.61 Singleton argued, although the medication order was legal during a stay of execution, once the state set the execution date, forcible medication was no longer in his best interest.62 In *Ford*, the Supreme Court explained the Eighth Amendment prohibited the execution of mentally incompetent individuals who were unaware of their pending punishment and the reasons for that punishment.63 The Eighth Circuit noted, under *Washington v. Harper*,64 the Supreme Court had established the right of the state to forcibly medicate an inmate who posed a threat to himself and others.65

The Eighth Circuit justified the government's interest in carrying out legally imposed sentences of convicted criminals by stating that at no time is the government's interest as high as it is in capital murder cases, which warranted imposition of the death penalty.66 However, the Eighth Circuit noted, like the test for forcibly medicating a prison detainee in order to render him competent to stand trial, the court must weigh the state's interest against the prisoner's interest in remaining free of medication.67 The Eighth Circuit explained, in weigh-

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56. Singleton, 319 F.3d at 1018, 1022.
57. Id. at 1022.
58. Id. at 1018, 1023.
59. Id. at 1023.
60. Id.
61. Id. at 1018, 1023.
62. Id. The court explained that this case involved the "interrelated issues of whether the State may forcibly administer antipsychotic medication to a prisoner whose date of execution has been set and whether the State may execute a prisoner who has been involuntarily medicated under a Harper procedure." Id.
63. Singleton, 319 F.3d at 1023.
66. Id. at 1018, 1025.
67. Id. at 1018, 1024-25.
ing the government’s interest against that of the prisoner, that Singleton voluntarily took his medication and actually preferred to be on the medication; therefore, the state’s interest in carrying out the death sentence imposed on Singleton, was the superior interest at hand.\(^{68}\) In addition, the district court reported Singleton never argued while on medication that he was incompetent, but instead claimed on medication he experienced an “artificial competence.”\(^{69}\) The record showed Singleton needed medication to make his symptoms subside and there was no less intrusive way to treat Singleton’s medical incompetence.\(^{70}\)

The Eighth Circuit explored the medical appropriateness of Singleton’s antipsychotic medication regime and determined Singleton was mentally incompetent in 1997.\(^{71}\) However, the medication had since returned him to competency.\(^{72}\) Based on these findings, the Eighth Circuit concluded the district court properly established Singleton’s medication was effective and any potential side effects did not overcome the benefits of the medicine.\(^{73}\)

Singleton’s key argument was, once the state set a date of execution, forced medication to render a prisoner competent for execution was clearly not in the prisoner’s best interest.\(^{74}\) Singleton contended the situation presented him with two unpleasant choices: either execution because the medication rendered him competent, or imprisonment and psychosis because he didn’t take the medication.\(^{75}\) Singleton thus offered a third alternative which would allow him to continue with the medication during a stay of execution until the medication was no longer needed.\(^{76}\) Singleton argued, because execution was not in his best interest, the medication that made execution plausible was only in his best medical interest throughout a stay of execution.\(^{77}\) However, the Eighth Circuit noted the state should examine a prisoner’s medical interest without regards to a date of execution.\(^{78}\) The Eighth Circuit held the mandatory medication treatment, valid

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\(^{68}\) *Id.* at 1018, 1025.

\(^{69}\) *Id.* at 1025.

\(^{70}\) *Id.*

\(^{71}\) *Id.* at 1018, 1025-26.

\(^{72}\) *Id.* at 1018, 1026. The court noted that under *United States v. Sell*, the court must determine whether the medication is appropriate to restore competency and if the side effects outweigh the interest of the state. *Id.* at 1025-26.

\(^{73}\) *Singleton*, 310 F.3d at 1018, 1026.

\(^{74}\) *Id.* at 1026.

\(^{75}\) *Id.*

\(^{76}\) *Id.*. Singleton conceded that the medication, although in his short-term interest, was not in his best interest in the future. *Id.*

\(^{77}\) *Singleton*, 319 F.3d at 1026.

\(^{78}\) *Id.* at 1018, 1026.
under a stay of execution, did not become unconstitutional when the state sets an execution date.\textsuperscript{79}

Singleton also relied on the Louisiana case of \textit{State v. Perry},\textsuperscript{80} which determined the state could not execute "artificially competent" individuals.\textsuperscript{81} However, the Eighth Circuit distinguished \textit{Perry}, stating the \textit{Perry} court based its decision on the best medical interest standard, which the Eighth Circuit had previously rejected.\textsuperscript{82} The Louisiana court found the state administered Perry's medication for the sole purpose of punishment and not out of medical necessity.\textsuperscript{83} The Eighth Circuit noted, in the present case, there was a medically necessary purpose to the administration of the drugs and thus, the sole purpose of forcible medication was not to render Singleton competent for execution.\textsuperscript{84} The Eighth Circuit concluded this contrasted \textit{Perry}, where the state used the drugs to punish and not to prevent harm to the prisoner or others.\textsuperscript{85}

After rejecting Singleton's two main arguments, the Eighth Circuit affirmed the district court's ruling and denied Singleton's petition for habeas corpus, noting \textit{Ford} prohibited the execution of a prisoner who was unaware of his upcoming punishment and the rationale behind the imposed sentence.\textsuperscript{86} The court noted when forced medication was constitutional under \textit{Harper} it did not cease to be constitutional when the state set an execution date.\textsuperscript{87} The Eighth Circuit additionally determined a state did not violate the Eighth Amendment, as elucidated by \textit{Ford}, when it executed an inmate who became incompetent while on death row, but who later regained competency through suitable medical care.\textsuperscript{88}

Judge James Loken, concurring in part and dissenting in part, agreed the state could execute an inmate rendered competent through use of forced medication, but noted the court could not have heard the case.\textsuperscript{89} Judge Loken explained the issue raised in Singleton's current habeas corpus petition was ripe during Singleton's prior petition and thus, Singleton should have presented the issue at that time.\textsuperscript{90} In addition, Judge Loken argued Singleton actually raised this argument in

\textsuperscript{79} \textit{Id.}
\textsuperscript{80} 610 So. 2d 746 (La. 1992).
\textsuperscript{81} \textit{Singleton}, 319 F.3d at 1026.
\textsuperscript{82} \textit{Id.} at 1018, 1026.
\textsuperscript{83} \textit{Id.} at 1026-27.
\textsuperscript{84} \textit{Id.} at 1018, 1026-27.
\textsuperscript{85} \textit{Id.}
\textsuperscript{86} \textit{Id.} at 1018, 1027.
\textsuperscript{87} \textit{Id.} at 1020.
\textsuperscript{88} \textit{Id.} at 1018, 1027.
\textsuperscript{89} \textit{Id.} at 1027 (Loken, J., concurring).
\textsuperscript{90} \textit{Id.} at 1027-28 (Loken, J., concurring).
the previous petition, therefore barring the claim under 28 U.S.C. § 2244, which limited a prisoner's right to bring two successive habeas corpus petitions.91

Circuit Judge Gerald Heaney dissented, joined by Circuit Judges Myron Bright, Theodore McMillian, and Kermit Bye, arguing the record showed the medication did not render Singleton competent.92 Further, the dissent noted, even on medication, Singleton appeared to have hallucinations and was unaware of why he was in prison.93 The dissent also stated, because the medication never truly alleviated Singleton's psychosis, the court would be unable to ensure Singleton was indeed Ford competent at the time of his execution.94 Because the Supreme Court in Ford interpreted the Eighth Amendment as forbidding the execution of the insane, the dissent contended forcible medication did not equal actual competence and therefore, executing someone in a medicated state would violate the Eighth Amendment.95 Moreover, the dissent reasoned when the state set the execution date, all justification for medicating Singleton vanished.96 Additionally, the dissent raised the constitutional issue encompassed in the Supreme Court decision of Washington v. Glucksburg,97 which established there was no constitutional right to physician assisted death.98 Judge Heaney stated when physicians medicate criminals in order to make them competent for execution, the physicians are essentially assisting in the prisoner's death.99 The dissent held the state may voluntarily or involuntarily medicate Singleton to protect him or others and if it is in his best medical interest, but it may not execute him.100 Judge Heaney agreed the state had the right to medicate Singleton, but opined a permanent stay of execution was more appropriate than executing a mentally incompetent individual.101 Therefore, the dissent stated it had no choice but to disagree with the majority.102

Circuit Judge Diana Murphy, joined by Circuit Judge Theodore McMillian, also dissented.103 The dissent determined the court could not reach a decision at that time because the record did not allow for

91. *Id.* (Loken, J., concurring).
92. *Id.* at 1031 (Heaney, J., dissenting).
93. *Id.* (Heaney, J., dissenting).
94. *Id.* at 1034 (Heaney, J., dissenting).
95. *Id.* at 1033, 1034 (Heaney, J., dissenting).
96. *Id.* at 1036 (Heaney, J., dissenting).
98. Singleton, 319 F.3d at 1037 (Heaney, J., dissenting).
99. *Id.* at 1030, 1037 (Heaney, J., dissenting).
100. *Id.* at 1037 (Heaney, J., dissenting).
101. *Id.*
102. *Id.*
103. *Id.*
proper resolution. Furthermore, in light of the Supreme Court's then recent grant of certiorari in United States v. Sell, Judge Murphy was unable to join in the majority opinion. Judge Murphy also explained she could not agree with the other dissent because a permanent stay of execution was unreasonable considering Singleton could regain competency eventually. Therefore, Judge Murphy reasoned the court should have ruled the petition moot or premature.

BACKGROUND

A. THE SUPREME COURT'S INTERPRETATION OF THE EIGHTH AMENDMENT AS BANNING EXECUTION OF THE MENTALLY ILL

In Ford v. Wainwright, the United States Supreme Court determined a state may not execute an insane criminal because the execution had no retributive or deterrence value. In 1974, the state trial court convicted Alvin Bernard Ford of murder and sentenced him to death. At the time of trial, Ford appeared competent to the court. However, by 1982, Ford's behavior began to change; he eventually manifested hallucinations and developed complex schemas about a Ku Klux Klan plan to force him to commit suicide. Ford believed senators and other government officials were holding his family and friends, approximately 135 people, captive in the prison. Ford refused to see the prison psychiatrist that examined him earlier, believing the doctor was a part of the conspiracy prevalent in the prison. Ford began to see Dr. Harold Kaufman, who concluded Ford did not understand why the state was executing him, Ford made no connection between his conviction and the death penalty imposed upon him, and Ford believed the state would not carry out his execution because he owned the prisons and could control the Governor through mind waves. A panel of three doctors produced three dif-
ferent diagnoses, but concurred as to Ford’s insanity; however, the governor decided on April 30, 1984, without statement or explanation, to sign a death warrant for Ford.\textsuperscript{117}

Ford’s attorneys attempted to obtain a hearing in state court, but were unsuccessful.\textsuperscript{118} The attorneys filed a writ of habeas corpus in the United States District Court for the Southern District of Florida, seeking to establish Ford’s insanity.\textsuperscript{119} Ford’s attorney provided evidence that conflicted the governor-appointed panel’s decision, but the district court denied the petition without hearing any evidence.\textsuperscript{120} On appeal, the United States Court of Appeals for the Eleventh Circuit stayed Ford’s execution under a certificate of probable cause.\textsuperscript{121} The Eleventh Circuit then tackled Ford’s claims the sanity commission incorrectly decided his competency, but ended by affirming the district court’s decision to deny the writ of habeas corpus.\textsuperscript{122} The United States Supreme Court granted certiorari to resolve whether the Eighth Amendment forbade the execution of those who suffered from mental illness and whether the district court should have conducted a hearing on Ford’s claim.\textsuperscript{123}

The Supreme Court reversed the decision of the Eleventh Circuit, concluding the Eighth Amendment prohibited states from executing insane prisoners.\textsuperscript{124} Justice Thurgood Marshall, writing for the majority, reasoned the Constitution’s prohibition of cruel and unusual punishment had existed since the country adopted the Bill of Rights and still existed today based on modern values rooted in human dignity.\textsuperscript{125} The Court noted the United States traditionally did not allow, nor support, execution of the insane.\textsuperscript{126} Justice Marshall explained the reasons set forth supporting the common law restriction against executing the insane have no less moral, logical, and practical force than they did when first declared.\textsuperscript{127} The Eighth Amendment, the Supreme Court opined, prohibited the execution of a prisoner who was mentally insane.\textsuperscript{128} Thus, the Supreme Court noted, if Ford could prove his insanity, it would bar his execution because common law

\begin{footnotes}
\item [117.] Ford, 477 U.S. at 403-404.
\item [118.] Id. at 404.
\item [119.] Id.
\item [120.] Id.
\item [121.] Id. at 399, 404.
\item [122.] Id.
\item [123.] Id.
\item [124.] Id. at 399, 409-10, 418.
\item [125.] Id. at 401, 405, 406.
\item [126.] Id. at 408-409.
\item [127.] Id. at 401, 409.
\item [128.] Id. at 409-10.
\end{footnotes}
had shown the practice of executing an insane person was cruel and unusual punishment.\textsuperscript{129}

The United States Supreme Court then addressed the question of whether the district court was under an obligation to conduct an evidentiary hearing on the issue of Ford's sanity.\textsuperscript{130} The Court noted no other court actually reviewed Ford's argument of insanity, which was a requirement of a federal hearing in a habeas corpus proceeding unless a full state court hearing occurred on the matter.\textsuperscript{131} In addition, the Court stated if the state court's hearing did not provide a full and fair trial, the federal court must hold an evidentiary hearing.\textsuperscript{132} The Court noted the three-doctor panel reviewed solely by the governor, without the prisoner's participation and without the ability to challenge that panel's ruling, was inadequate to achieve the reliability required for the protection of any constitutional interest.\textsuperscript{133} The Supreme Court concluded, because of the Florida trial court's various errors, the federal system needed to review the court's decision regarding Ford's competency.\textsuperscript{134} Further, the Court noted it was abhorrent to take the life of a mentally ill prisoner who was unable to comprehend the purpose of the penalty imparted upon him.\textsuperscript{135} Thus, the United States Supreme Court declared the district court should hold an evidentiary hearing to review Ford's competency de novo.\textsuperscript{136}

Justice Lewis Powell, Jr., concurring in part, addressed two issues: the meaning of insanity and the proper state procedures for evidentiary hearings.\textsuperscript{137} Justice Powell maintained if the Eighth Amendment prohibited the execution of those in a particular mental state, the law provided few standards to define the mental competency required for execution under the Eighth Amendment.\textsuperscript{138} Justice Powell reasoned most states measure mental capacity by the defendant's ability to understand the upcoming execution and the basis for the sentence; if this was achieved, the judicial system accomplished its purpose.\textsuperscript{139} Justice Powell concluded Ford did not seem to understand the reasons for his impending execution and therefore, Ford appeared to have a valid claim that the district court should review.\textsuperscript{140}

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\textsuperscript{129} Id. at 399, 405, 410. \\
\textsuperscript{130} Id. at 399, 410. \\
\textsuperscript{131} Id. at 410. \\
\textsuperscript{132} Id. at 411. \\
\textsuperscript{133} Id. at 413, 415. \\
\textsuperscript{134} Id. at 399, 416. \\
\textsuperscript{135} Id. at 417. \\
\textsuperscript{136} Id. at 399, 418. \\
\textsuperscript{137} Id. at 418 (Powell, J., concurring). \\
\textsuperscript{138} Id. at 418, 419 (Powell, J., concurring). \\
\textsuperscript{139} Id. at 418, 421-22 (Powell, J., concurring). \\
\textsuperscript{140} Id. at 418, 422-23 (Powell, J., concurring). 
\end{flushright}
After reviewing the definition of insanity, Justice Powell examined Florida's Governor's determination of Ford's competency. Here, Justice Powell agreed with the majority opinion, claiming it seemed inappropriate to allow a member of the executive branch to decide a judicial function because it did not provide Ford with a full and fair hearing.

However, Justice Powell did not agree with Justice Marshall's ruling that there should be a full-scale sanity hearing. Instead, he noted in capital punishment cases the state has a legitimate interest, regardless of a petitioner's insanity claim, because the court has already convicted the prisoner of a capital offense and sentenced him accordingly. Justice Powell noted the petition raised the question of not whether, but when, Ford's execution may have occurred. Furthermore, Justice Powell stated the threshold for reviewing the sanity of a prisoner who was competent at the time of trial was greater than in other circumstances. Therefore, ordinary adversarial procedures, with cross-examination, testimony, lawyers, and closing statements, were not automatically the best means of determining an individual's sanity. In other words, the due process required under those circumstances may have been far less than a full fledged trial. However, Justice Powell provided because Ford raised a practical claim under the Eighth Amendment, he was due a proper hearing by the district court.

Justice Sandra Day O'Connor, joined by Justice Byron White, concurred in the judgment, noting the majority's decision to remand was correct because of a flaw in Florida's process involving the right of an individual to be heard under the Due Process Clause. Justice O'Connor noted the Florida procedure did not allow adversary participation by the petitioner, such as written submissions. Thus, Justice O'Connor explained the court should remand the case to hold a proper procedure under the Due Process Clause. However, Justice O'Connor opined, when society had validly convicted a detainee of a crime and established a punishment, the due process requirements

141. *Id.* at 418, 423 (Powell, J., concurring).
142. *Id.*
143. *Id.* at 418, 425 (Powell, J., concurring).
144. *Id.*
145. *Id.*
146. *Id.* at 426 (Powell, J., concurring).
147. *Id.*
148. *Id.* at 427 (Powell, J., concurring).
149. *Id.* at 418, 427 (Powell, J., concurring).
150. *Id.* at 427 (O'Connor, J., concurring).
151. *Id.* at 427, 430 (O'Connor, J., concurring).
152. *Id.* at 430 (O'Connor, J., concurring).
were reduced accordingly and the potential for false claims and intentional delay in this situation was obviously enormous.\footnote{Id. at 427, 429 (O'Connor, J., concurring).} Accordingly, the Due Process Clause imposed few restrictions under those circumstances.\footnote{Id. at 429 (O'Connor, J., concurring).}

Justice William Rehnquist joined by Chief Justice Warren Burger dissented, reasoning case precedent supported the executive branch of government finding a prisoner insane.\footnote{Id. at 431, 434-35 (Rehnquist, J., dissenting).} The dissent also noted that allowing full trials in the case of every insanity claim would unnecessarily complicate and hinder the judicial system.\footnote{Id. at 435 (Rehnquist, J., dissenting).} Justice Rehnquist noted, if a court allowed a petitioner facing execution a third full trial after the petitioner had received a full hearing and a sentencing hearing, claims of insanity could arise in order to avoid the death penalty.\footnote{Id. at 431, 435 (Rehnquist, J., dissenting).}

B. THE SUPREME COURT PERMITS THE STATES TO FORCEFULLY MEDICATE PRISONERS

In Washington v. Harper,\footnote{494 U.S. 210 (1990).} the United States Supreme Court held the state had an interest in protecting an inmate from himself and others through the use of forcible medication and that the Due Process Clause did not necessarily require a judicial proceeding to establish a prisoner's mental capacity.\footnote{Washington v. Harper, 494 U.S. 210, 236 (1990).} In 1976, the state trial court initially sentenced Walter Harper ("Harper") to prison for a robbery.\footnote{Harper, 494 U.S. at 213.} During his four year detention at Washington State Penitentiary, he resided in the mental health unit where he willingly took antipsychotic drugs to restore his competency.\footnote{Id. at 213-14.} In 1981, subsequent to his parole, the court returned Harper to a Special Offender Center ("Center") after he attacked two nurses at a mental health facility.\footnote{Id. at 214. The Special Offender Center is a facility for criminals with severe mental disorders. Id. When Harper arrived at the Center he was diagnosed with manic-depressive disorder and voluntarily took medication to aid in his treatment. Id.} By 1982, Harper began to resist medication at the Center at which point the Center psychiatrist sought to medicate Harper against his will.\footnote{Harper, 494 U.S. at 214.}

The Center based its policy for forcibly administering medication on the Supreme Court decision of Vitek v. Jones,\footnote{445 U.S. 480 (1980).} which established
a prisoner must be mentally unhealthy and disabled by a mental problem or pose a serious harm to himself or others for the state to impose medication. In addition, the Court in Vitek explained before the court could impose a medication regiment, the court must allow a special hearing by impartial hospital doctors and administrators, while providing certain procedural rights throughout the trial process, including the right to present a case at the hearing. In this case, a sanity commission, composed of Center doctors and staff, found Harper posed a danger to himself and others. On appeal from the sanity committee's decision, the Center's superintendent affirmed the order of the review panel to medicate the prisoner. From 1982 to 1986, Harper received antipsychotic medication against his will.

In 1985, Harper filed suit in Washington Superior Court for Snohomish County claiming the trial court had violated his constitutional rights by administrating antipsychotic medication against his objections and without a judicial hearing. Judge Daniel Kershner held the Center's policy of reviewing mentally incompetent individuals was constitutional and thus dismissed the case. The court reasoned, even though Harper had a liberty interest in remaining drug free, the Center had not violated the Constitution in either its procedure or decision.

Harper appealed the decision of the state court to the Washington Supreme Court, arguing that forcibly medicating him violated the Due Process, the Free Speech, and Equal Protection Clauses of the federal and state constitutions. The Washington Supreme Court reversed the trial court's decision noting, because of the intrusiveness of antipsychotic medications, the state required more procedural safeguards to protect the petitioner's liberty interests. The Washington Supreme Court held the Constitution required a full adversarial hearing under the Due Process Clause and the state must prove the medication was essential and appropriate to fulfill a compelling state interest in order to provide the nonconsenting prisoner the full procedural protection the Constitution afforded. Harper filed a petition for a writ

166. Id. at 215-16.
167. Id. at 217.
168. Id.
169. Id.
172. Id.
173. Id.
174. Id. at 218.
175. Id.
of certiorari with the United States Supreme Court, which granted certiorari to consider a mentally incompetent individual’s constitutional right to a trial prior to the state forcibly administering medication to the individual.176

The United States Supreme Court reversed the decision of the Washington Supreme Court, holding the procedure utilized by the Center met the requirements of due process and that the state had a legitimate interest in providing medical treatment to decrease the danger an inmate, suffering from a severe mental disorder, presented to himself or others.177 Justice Anthony Kennedy, writing for the majority, reasoned the Court must examine both substantive and procedural issues involved in the case.178 He noted the substantive issue was what factual circumstances must exist prior to the state administering antipsychotic drugs to an inmate against his will; the procedural issue was whether the state’s mechanisms, used to determine the facts in a specific case, were sufficient.179

Dealing first with the substantive issue, the Court noted the requirement of a mental condition under Vitek and harmful behavior were factors the Court needed to decide before the administration of drugs was appropriate.180 Mentioning the undeniable liberty interest of the prisoner, the Court explained the prisoner’s liberty interests were no greater than the interest of the state to carry out a sentence and to ensure prison safety.181 The Court reasoned the safeguards in place at the Center recognized the prisoner’s liberty interests, the prisoner’s medical interests, and the state’s reasonable interests in preserving prison safety and penological interests.182 The Court added the state not only had an interest, but an obligation to provide necessary medical treatment while meeting the needs of the prison.183 The Court held the procedure the Center used to review mental illness was adequate to protect Harper’s substantive rights.184

Examining whether administration of antipsychotic drugs required a judicial decision, the Court rationalized the prisoner’s interests were better protected when determined by medical professionals familiar with the side effects and consequences of antipsychotic drugs, rather than by judges.185 The Court added the Constitution in no way

176. Id. at 210, 213, 218.
177. Id. at 210, 236.
178. Id. at 213, 220.
179. Id. at 220.
180. Id. at 221.
181. Id. at 221-22.
182. Id. at 222-23.
183. Id. at 225.
184. Id. at 228.
185. Id. at 231.
excluded the state from allowing medical personnel to make a decision under fair procedures. The Court ended the due process discussion by contending Washington's procedural safeguards met all other due process requirements, such as notice and the right to present a defense.

Justice Harry Blackmun concurred, reasoning if when mental health issues arose the state properly committed the prisoners, many difficult issues would subside. He added although committing such persons may prove to be a nuisance it would protect all involved, including the inmate, the institution, and the other prisoners. Justice Blackmun concluded his argument by contending the Court should consider the availability of institutionalization when dealing with an inmate's incompetency.

Justice John Paul Stevens, joined by Justice William Brennan and Justice Thurgood Marshall, concurred in part and dissented in part, reasoning the majority failed to appreciate Harper's liberty interests. Justice Stevens noted a panel composed of institutional participants created a biased forum under which the prisoner must argue his case. Justice Stevens contended one of our nation's core beliefs rested in its citizens' right to avoid mind altering drugs, especially such mind altering drugs as antipsychotic medication, which may cause death or irreversible side-effects.

C. THE LOUISIANA SUPREME COURT PROHIBITS THE EXECUTION OF AN INSANE PRISONER

In State v. Perry, the Supreme Court of Louisiana opined that, because Michael Owen Perry ("Perry") was insane, the court could not overturn his stay of execution unless Perry regained his sanity. In 1983, the state trial court sentenced Perry to death for the murder of five of his relatives, including his mother and father. Perry's mental health became a question and a concern of the court during Perry's criminal proceedings. After a psychiatric evaluation, the
court diagnosed Perry's schizophrenia and placed him on antipsychotic drugs.198 Within eighteen months, a sanity commission determined Perry was competent to stand trial.199 Subsequently, the district court found Perry guilty of murder.200

Perry appealed the district court's decision to the Louisiana Supreme Court.201 The court affirmed the lower court's decision, but noted a determination of Perry's sanity was required to ascertain if the state could execute him.202 Following the suggestion of the Louisiana Supreme Court, the Louisiana trial court assembled another sanity commission, which reported Perry had incurable schizoaffective disorder.203 The trial court concluded Perry could only temporarily regain competence while treated with antipsychotic medication and thus, Perry was insane and incompetent for purposes of execution.204 The court ordered the state to administer medication to Perry — forcibly if necessary.205 After the Louisiana Supreme Court denied Perry's appeal, the United States Supreme Court granted Perry certiorari, vacating the trial court's order and remanding the case to the trial court.206 The trial court did not hear additional evidence and reinstated the forcible medication order in spite of Harper.207

The Louisiana Supreme Court granted a writ to appraise the trial court's decision, explaining there was no question as to Perry's insanity, but a question existed as to whether the Constitution allowed the state to forcibly medicate a prisoner and thereafter execute him.208 The court noted if Perry were sane, the state could constitutionally execute him.209 The Louisiana Supreme Court explained the United States Supreme Court in Ford interpreted the Eighth Amendment as prohibiting a state from executing the insane.210 The court stated multiple theories existed for the prohibition against executing the insane, including ethical, moral and theological arguments, together with the lack of retributive and deterrent value evident in executing the insane.211 The Louisiana Supreme Court continued by
explaining Louisiana adhered to the principle that the court could not execute a prisoner convicted of a capital crime who became insane while in prison.\textsuperscript{212} The majority opinion explained, because the Supreme Court remanded the case to the trial court without a decision, the United States Supreme Court must have wanted the trial court to apply state law in its decision.\textsuperscript{213}

After establishing its right to decide the case based on both Harper and Louisiana precedent, the Louisiana Supreme Court stated the court may not administer antipsychotic medication for the purpose of punishment.\textsuperscript{214} The Louisiana Supreme Court explained forced medication combined with a date of execution, took away a prisoner's rights to autonomy.\textsuperscript{215} The court reasoned if a prisoner chooses a life free of psychosis, thus choosing to live in a medicated state, he becomes competent for execution; on the other hand, if the patient chooses not to be executed, he must live with hallucinations, schizophrenia, and other mental ailments.\textsuperscript{216}

The Louisiana Supreme Court claimed, under Harper, a state can only medicate a prisoner when it served the patient's best medical interests or was in the best interest of prison security.\textsuperscript{217} Furthermore, the Court noted the courts should administer medication against a prisoner's will for purposes of medical treatment — not for punishment — and only under the supervision of a licensed physician.\textsuperscript{218} The Louisiana Supreme Court concluded the medicate-to-execute scheme violated Perry's constitutionally protected interest to choose whether to obtain or reject treatment and to choose what medically occurs to his mind and body.\textsuperscript{219} In addition, the court concluded, when a state executed a prisoner on antipsychotic medication, the goal of retribution or deterrence for capital cases was lost.\textsuperscript{220} Lastly, the court noted the Constitution forbade execution of insane prisoners and had done so for centuries.\textsuperscript{221}

In a concurrence, Justice Jack Crozier Watson concentrated on the inherent problem with executing an insane prisoner made temporarily sane by medication.\textsuperscript{222} He explained there was neither need
nor purpose in executing an insane prisoner. The concurrence noted for such a barbarous act to be appropriate there must be an overwhelming penological interest. Justice Watson contended the needed penological interest was not present in Perry.

Justice Harry Lemmon also concurred, claiming the majority opinion correctly decided that requiring forced medication for the sole purpose of execution was inhumane, cruel and unusual punishment. Justice Lemmon stated capital punishment, while constitutionally allowed for a sane criminal, was inappropriate punishment for a prisoner who could not understand his penalty or the reason for that penalty, unless he was medicated forcibly for the sole purpose of creating competency for execution. He offered life imprisonment as an alternative to the death penalty.

Justice Walter Marcus, Jr., dissenting, explored the facts supporting the psychiatrists’ determination to medicate Perry. The dissent also noted, on medication, Perry was aware of the death penalty and the reasons the court imposed it upon him. Justice Marcus delineated three issues in the case: (1) what level of capability was required for execution; (2) whether the court could forcibly medicate Perry and then execute him; and (3) what were the due process requirements in such a situation.

Justice Marcus, relying on Justice Powell’s concurrence in Ford, claimed the only threshold of competency required to execute an insane individual was the prisoner’s awareness of the punishment and the reason behind the imposition of the punishment. Justice Marcus argued Perry’s psychiatric evaluation showed he knew of his punishment and the reasons for it. Next, Justice Marcus turned to examine the Supreme Court’s decision in Harper, explaining the forced medication of Perry was constitutionally permitted. Justice Marcus described the penological interest inherent in carrying out a prisoner’s sentence could be just as high as the penological interest inherent in prison safety. Lastly, Justice Marcus examined the due process requirements necessary to medicate prisoners involunta-

223. Id.
224. Id.
225. Id.
226. Id. at 772 (Lemmon, J., concurring).
227. Id.
228. Id.
229. Id. at 772-74 (Marcus, J., dissenting).
230. Id.
231. Id. at 772, 774 (Marcus, J., dissenting).
232. Id.
233. Id. at 772, 775 (Marcus, J., dissenting).
234. Id.
235. Id.
rily. Justice Marcus noted Perry's mental analysis, conducted by the sanity commission, was complete and indepth. The Louisiana trial court conducted and re-conducted sanity hearings for Perry which were subject to appeal, showing Louisiana procedures met the due process requirement of the Constitution. In conclusion, Justice Marcus stated he would adopt the standard established in Justice Powell's concurrence in Ford, which noted a prisoner must merely understand the sentence he faced in order for the state to execute him. Justice Powell argued while Perry was on medication he was sane enough to understand his impending execution, which complied with the Ford standard. Hence, the state could execute Perry under the Eighth Amendment because he was competent.

In the final opinion written by the court, Justice Cole dissented, claiming the majority's opinion was unsound and was not based on constitutional edicts. Justice Cole argued supplying an ill prisoner with medication, which relieved symptoms of mental illness, could not be thought of as violating the prisoner's best medical interest. Next, Justice Cole contended that administering antipsychotic medication to a mentally incompetent individual did not interfere with the individual's liberty rights under the United States or the Louisiana Constitutions. Justice Cole added the intensity of Perry's crime deserved only the appropriate punishment, meaning lethal injection, and society had the right to punish those who committed crimes with or without real or feigned insanity.

D. THE NINTH CIRCUIT GRANTS A STAY OF PROCEEDINGS FOR MENTALLY ILL INMATES WHO CANNOT ADEQUATELY ASSIST COUNSEL IN THEIR DEFENSE

In Rohan v. Woodford, the Ninth Circuit reviewed a prisoner's right to receive a stay of proceedings while incompetent and held that if a prisoner cannot communicate with counsel because of incompetency, the state must order a stay of proceedings. Although the right to confer with counsel in a coherent manner during post-convic-
tion hearings was the main issue the court addressed, it also explored the implications of executing an insane individual. In "Rohan," Oscar Gates ("Gates") received the death penalty for murdering Lonnie Stevenson. Through testimony by neighbors and a psychologist, the jury found Gates competent and sentenced him to death for the murder.

After his conviction, Gates' mental condition deteriorated, evidenced by his numerous petitions made to the court claiming he was an heir to a huge fortune and therefore, the government was trying to assassinate him to get his money. Gates also had a number of other delusions. Seeking habeas corpus relief in both state and federal courts, Gates' counsel argued that Gates' conviction was unconstitutional on numerous grounds. Gates' counsel presented an argument that rested on Gates' inability to properly assist in his defense during further proceedings because of his insanity. Gates' attorneys also claimed they were unable to present these arguments because of Gates' mental condition.

During that time, the state sent Gates to the California Department of Mental Health so mental health professionals could examine him. The psychologists determined Gates was indeed mentally ill, and Gates' mental incompetence interfered with the understanding of his surroundings and his ability to communicate with counsel. Gates' psychiatrist, and those at the hospital, concluded Gates was unable to assist in any type of defense needed for his writ of habeas corpus proceedings.

The district court heard testimony regarding Gates' competency and determined Gates' mental condition would impede his counsel from protecting his rights. However, even after reaching that conclusion, the district court neglected to stay further proceedings, as Gates' counsel had requested, and instead appointed Colleen Rohan.
"Rohan"), a "next friend," to protect Gates' interest. Rohan soon noted she also had trouble communicating with Gates and therefore was unable to present an adequate defense; however, the district court still denied the stay of proceedings. The district court held the Constitution's Due Process Clause did not require a stay because the court appointed Gates a next friend and, although it noted the need of a defendant to be competent for trial, the court did not see the same necessity for a habeas proceeding.

In order to review the issue, the district court certified its ruling so the Ninth Circuit could conduct an interlocutory review. The Ninth Circuit evaluated the consequences of Gates' incompetence, but not whether Gates was actually incompetent. The court contended, should the prisoner become insane after his conviction, he may be unable to adequately relay or remember information that would free him from captivity. Essentially, the Ninth Circuit reasoned being sane consisted not only of understanding one's surroundings, but also having the ability to relay information which could result in exoneration.

The Ninth Circuit then conveyed the right to competency did not expire with the jury's verdict. The Ninth Circuit added the right to be competent endured from judgment to execution. Circuit Judge Alex Kozinski, writing for the majority, admitted there remained unsettled questions regarding the exact scope of the bar against executing the insane. The Ninth Circuit then pondered the following questions: if a man goes insane, is he still himself? Is he the same man who was convicted of the crime? In any event, if he were of sound mind, might he contend something to save himself from doom? The court ended this analysis by exploring a previous Supreme Court decision. The Ninth Circuit reiterated the Supreme Court's holding that the Eighth Amendment barred the execution of

260. Id.
261. Id.
262. Id. The Ninth Circuit stated "that federal statutory law and Supreme Court precedent both assume that next friends can pursue habeas claims on an incompetent prisoner's behalf." Id. at 803, 806.
263. Rohan, 334 F.3d at 803, 807.
264. Id.
265. Id. at 807.
266. Id. at 803, 808.
267. Id.
268. Id.
269. Id. at 804, 809.
270. Id. (citing Solesbee v. Balkcom, 339 U.S. 9, 19-20 (1950)).
271. Id.
272. Id.
273. Id. at 809. The Rohan court discussed Supreme Court cases such as Ford v. Wainwright. Id.
insane individuals, while acknowledging the Supreme Court failed to define the term insane.\textsuperscript{274}

The Ninth Circuit then examined the competency required to participate in a collateral review of a conviction, such as a habeas corpus proceeding.\textsuperscript{275} The Ninth Circuit noted, although Congress had not required competency during a habeas corpus proceeding, the common law implied such a requirement.\textsuperscript{276} The majority’s opinion explained that those who challenge convictions in capital cases have the right to counsel and counsel’s assistance, which implied prisoners have the right to adequately assist counsel in their defense.\textsuperscript{277} The Ninth Circuit thus concluded Gates had a right to be competent at his habeas proceeding.\textsuperscript{278}

The Ninth Circuit next examined whether the district court had protected Gates’ rights when it refused to extend a stay of proceedings.\textsuperscript{279} The Ninth Circuit explained if Gates were competent, he could explain and potentially validate his claims.\textsuperscript{280} The court stated by forcing a prisoner to conduct a proceeding while incompetent, the court prevented the prisoner from relaying pertinent information for his defense.\textsuperscript{281} The court explained to forbid an individual from effectively assisting counsel contradicted the theory that a lawyer should be able to communicate with his or her client.\textsuperscript{282} The Ninth Circuit determined the court should stay proceedings in Gates’ case until Gates returned to a competent state.\textsuperscript{283}

ANALYSIS

In Singleton v. Norris,\textsuperscript{284} the United States Court of Appeals for the Eighth Circuit found the state would not violate the Eighth Amendment by executing a prisoner who was made competent through forced medication.\textsuperscript{285} The Eighth Circuit examined alleged violations of the Eighth Amendment and the Due Process Clause, which arose from the execution of a prisoner made competent through medication.\textsuperscript{286} The Eighth Circuit, relying on Eighth Amendment

\textsuperscript{274} Rohan, 334 F.3d at 809.
\textsuperscript{275} Id. at 803, 810.
\textsuperscript{276} Id. at 803, 812-13.
\textsuperscript{277} Id. at 813.
\textsuperscript{278} Id. at 817.
\textsuperscript{279} Id. at 803, 817.
\textsuperscript{280} Id. at 803, 818.
\textsuperscript{281} Id. at 818.
\textsuperscript{282} Id. at 818-19.
\textsuperscript{283} Id. at 803, 819.
\textsuperscript{284} 319 F.3d 1018 (8th Cir. 2003).
\textsuperscript{285} Singleton v. Norris, 319 F.3d 1018, 1027 (8th Cir. 2003).
\textsuperscript{286} Singleton, 319 F.3d at 1018, 1023, 1025.
limitations regarding the execution and forced medication of the insane presented in *Ford v. Wainwright*\(^{287}\) and *Washington v. Harper*,\(^{288}\) determined the Constitution allowed the execution of those who became insane during their prison sentence and who subsequently regained competency through medication.\(^{289}\) In doing so, the Eighth Circuit stated a clear rule prohibiting the execution of a mentally incompetent person derived from the Eighth Amendment.\(^{290}\) The *Singleton* court concentrated its analysis on the portion of the *Ford* decision, which explained the Eighth Amendment's prohibition on executing the insane referred only to those individuals unaware of the punishment they received and why they received it.\(^{291}\) The Eighth Circuit next examined *Harper* and noted, pursuant to *Harper*, a state may medicate a prisoner who either posed a danger to himself or others, and where the medication served the prisoner's best interests.\(^{292}\) The Eighth Circuit determined the court had properly medicated the defendant, Charles Singleton ("Singleton"), because he posed a risk to himself.\(^{293}\) The court therefore opined, because Singleton's medication was proper and because Singleton was aware of the reasons behind his sentence, the state could execute him.\(^{294}\)

In *Singleton*, the Eighth Circuit incorrectly interpreted *Ford* and *Harper* and thus deviated from precedent, defying the basic purpose of the Eighth Amendment, which forbids the execution of insane individuals.\(^{295}\) This Analysis will demonstrate that the Eighth Circuit neglected to properly define the level of sanity needed for a state to execute a prisoner.\(^{296}\) In addition, this Analysis will argue the Eighth Circuit misinterpreted the Eighth Amendment's ban on executing the insane by allowing the execution of a prisoner determined insane by medical professionals.\(^{297}\) Finally, this Analysis will show the Eighth Circuit deviated from precedent when it determined a prisoner on antipsychotic medication passed the *Ford* competency test for executing the insane, instead of noting the prisoner's state of artificial competence.\(^{298}\)

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289. *Singleton*, 319 F.3d at 1018, 1023, 1027.
290. Id. at 1018, 1023.
291. Id. at 1023 (citing *Ford*, 477 U.S. at 422 (Powell, J., concurring)).
292. Id. at 1018, 1024, 1026 (citing *Harper*, 494 U.S. at 227).
293. Id. at 1020, 1025.
294. Id. at 1027.
295. See infra notes 299-434 and accompanying text.
296. See infra notes 299-344 and accompanying text.
297. See infra notes 345-98 and accompanying text.
298. See infra notes 399-434 and accompanying text.
A. THE LEGAL REQUIREMENT OF A HEALTHY MIND — THE SINGLETON COURT FAILED TO ADEQUATELYDEFINE SANITY AND THE LEVEL OF COMPETENCY NEEDED FOR EXECUTION

The Eighth Circuit in Singleton incorrectly determined Singleton was competent for purposes of execution.\(^{299}\) Insanity, as a legal term, refers to any mental disorder serious enough that it prohibits a person from exercising their legal capacity and thus, excuses the person from all responsibility, both criminal and civil.\(^{300}\) Sanity, on the other hand, refers to the state of having a healthy mind.\(^{301}\) Although there appears to be little dispute that the Eighth Amendment bans the execution of the insane, there seems to be just as little consensus about what it means to be “insane,” and how the court should define it during different stages of the criminal process.\(^{302}\) Many courts have measured insanity by an individual’s ability to determine right from wrong; those courts have explained measuring insanity, at the time of execution, should involve the ability of the prisoner to comprehend his impending sentence and the reasons for his execution.\(^{303}\) In an effort to define a standard for determining sanity in times of an impending execution, the Ford court claimed the Eighth Amendment prevented the execution of the insane who were unaware of their punishment and its justifications.\(^{304}\) In Singleton, the prisoner never fully regained competency and was at times unaware of the reasons behind his imprisonment, thereby failing the test set forth in Ford which required a prisoner be aware of his impending punishment before a legal execution can occur.\(^{305}\)

By 1997, the state medicated Singleton because he posed a danger to himself and others, demonstrating that medical professionals attending to Singleton’s health regime questioned his Ford-competency.\(^{306}\) The court reviewed Singleton’s medical history which showed what started as treatment for anxiety and depression soon turned to treatment for schizophrenia.\(^{307}\) In 1993, while on an antip-
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sychotic medication regime, Singleton once again exhibited signs of mental illness, including vivid hallucinations such as a belief the Eighth Circuit had freed him and that the woman he had murdered was not dead.\textsuperscript{308} Despite continuous efforts to abate Singleton's hallucinations, including increased dosages, Singleton's condition failed to improve dramatically.\textsuperscript{309} Singleton, both on and off his antipsychotic medication, recurrently exhibited signs of insanity.\textsuperscript{310} Singleton exhibited severe mental disorders and an unhealthy mind during his stay in prison, which demonstrated Singleton was legally insane.\textsuperscript{311}

Contrary to the widely accepted definition of sanity, the Eighth Circuit declared Singleton competent even though Singleton's hallucinations, intelligible speech, and schizophrenia demonstrated Singleton was not in a healthy state of mind.\textsuperscript{312} The Eighth Circuit should have noted Singleton was not sane even on antipsychotic drugs, which neither masked nor cured Singleton's symptoms.\textsuperscript{313} The court should have deemed Singleton insane and therefore unfit for execution because of his unsound and unhealthy mind.\textsuperscript{314}

The Supreme Court's only review of the definition of sanity came from the concurring opinion in Ford.\textsuperscript{315} In the Ford opinion, Justice Powell explained the standard that should apply in deciding the mental state of a prisoner facing execution.\textsuperscript{316} Justice Powell explained the defendant must understand the connection between his crime and the punishment received.\textsuperscript{317} Only when the prisoner understands the nexus between his crime and punishment does the court achieve retributive value from the death penalty.\textsuperscript{318} Therefore, Justice Powell held the Eighth Amendment prohibited the execution of those who were unable to understand the punishment they were about to receive and why they were to suffer it.\textsuperscript{319} In Ford, the Court explained Ford could not understand his sentence because he believed
the court had actually overturned his sentence.\footnote{320} Justice Powell noted, if a prisoner cannot connect his sentence to his crime, the state should not execute him.\footnote{321}

Singleton exhibited signs of insanity both on and off his medication and, at one point, believed that the United States Supreme Court and the Eighth Circuit had freed him.\footnote{322} Like Ford, Singleton believed that he would not be subjected to the death sentence.\footnote{323} The Eighth Circuit explained Singleton rarely demonstrated consistent signs of sanity, believing the courts had overturned his sentence, and that the woman he murdered was alive and waiting for Singleton to join her.\footnote{324}

Even if the Eighth Circuit correctly chose to analyze Singleton's sanity by adopting the \emph{Ford} test of punishment comprehension, it was wrong in deciding Singleton was aware of the sentence he faced because at times Singleton thought the state had already executed him, that his victim was not dead, and that the Eighth Circuit had freed him.\footnote{325} The Eighth Circuit improperly used the \emph{Ford} standard to determine Singleton was competent for purposes of execution.\footnote{326} Thus, the Eighth Circuit incorrectly determined Singleton's mental state when it based his sanity on his comprehension of an imposed sentence while ignoring Singleton's actual mental condition and his perceived reality of his circumstances.\footnote{327}

The Eighth Circuit could have also relied on \emph{Rohan v. Woodford}\footnote{328} in reviewing Singleton's sanity and the implications of such sanity on the ability of the state to execute him.\footnote{329} In \emph{Rohan}, the United States Court of Appeals for the Ninth Circuit opined "competence" meant the defendant has the ability to make a defense and al-lege something to obtain a stay of judgment or proceedings.\footnote{330} The court stated competence was more than just the capacity to understand what was going on, but included the ability to communicate ac-

\begin{footnotes}
\footnote{320}{Id.}
\footnote{321}{Id. at 422-23 (Powell, J., concurring).}
\footnote{322}{Singleton, 319 F.3d at 1031.}
\footnote{323}{Id. at 1031, 1033.}
\footnote{324}{Id. at 1032-33.}
\footnote{325}{See supra notes 315-24 and accompanying text.}
\footnote{326}{Compare Singleton, 319 F.3d at 1018-27 (stating Singleton's knowledge of his punishment while medicated was sufficient not to violate the Eighth Amendment ban on executing the insane under the \emph{Ford} decision and other precedent), \emph{with Ford}, 477 U.S. at 399 (stating the defendant must understand the connection between his sentence and crime).}
\footnote{327}{See supra notes 315-24 and accompanying text.}
\footnote{328}{334 F.3d 803 (9th Cir. 2003).}
\footnote{329}{See infra notes 330-40 and accompanying text.}
\footnote{330}{Rohan v. Woodford, 334 F.3d 803, 803, 808 (9th Cir. 2003).}
\end{footnotes}
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quitting information to others.\footnote{Rohan, 334 F.3d at 808.} Using this definition, the Ninth Circuit in \textit{Rohan} granted the petitioner, Oscar Gates, a stay of proceedings because he could not communicate adequately with counsel.\footnote{Id. at 803, 808, 819.} Gates suffered hypergraphia, which the court explained carried with it delusions, such as Gates' belief he was entitled to the Howard Hughes fortune and the belief Howard Hughes had given Gates the cure for AIDS.\footnote{Id. at 805.} The court explained Gates suffered from a mental disease that interfered with his rational understating of proceedings and he also was unable to make rational decisions.\footnote{Id. at 806.}

In \textit{Singleton}, Singleton's delusions were extensive and involved moments when Singleton was observed to be zombie-like, nonresponsive, and exhibiting strange speech patterns.\footnote{Singleton, 319 F.3d at 1031 (Heaney, J., dissenting).} The Eighth Circuit continued to explain Singleton's thinking was disorganized and he was difficult to follow.\footnote{Id. at 1032 (Heaney, J., dissenting).} Justice Heaney explained it was questionable if the medication would return Singleton to competency, but it was only when returned to a competent state that he would return to his prior level of competency.\footnote{Id. at 1033 (Heaney, J., dissenting).}

Following the ruling in \textit{Rohan}, the Eighth Circuit should not have found Singleton sane for purposes of execution.\footnote{Compare \textit{Singleton}, 319 F.3d at 1018-27 (stating Singleton's knowledge of his punishment while medicated was sufficient not to violate the Eighth Amendment ban on executing the insane), with \textit{Rohan}, 314 F.3d at 819 (stating the court must stay the proceedings in the case until Gates regained competence).} The \textit{Rohan} court ordered a stay of proceedings because Gates could not communicate with counsel and thus was incompetent, while the \textit{Singleton} court determined, although Singleton exhibited similar insane characteristics and had trouble communicating with doctors and counsel, that the state should execute him.\footnote{Compare \textit{Singleton}, 319 F.3d at 1027, 1031-32 (explaining a state can execute a prisoner, under the Eighth Amendment, who becomes incompetent while on death row), with \textit{Rohan}, 314 F.3d at 819 (stating the court must stay the proceedings in the case until Gates regained competence).} The \textit{Singleton} court, under \textit{Rohan}, should have stayed not only Singleton's execution, but the proceedings surrounding the execution as well.\footnote{Compare \textit{Singleton}, 319 F.3d at 1018-27 (stating Singleton's knowledge of his punishment while medicated was sufficient not to violate the Eighth Amendment ban on executing the insane), with \textit{Rohan}, 314 F.3d at 819 (stating the court must stay the proceedings in the case until Gates regained competence).}

Contrary to the established legal definition of sanity, the Eighth Circuit determined that Singleton was sane despite evidence of his un-
healthy mind.\textsuperscript{341} However, if the Singleton court correctly used the Ford standard, the court misapplied the standard in determining Singleton's competency because Singleton did not understand his execution and thought the courts had freed him.\textsuperscript{342} In addition, the Eighth Circuit could have followed the definition of competence from the Rohan decision and determined that the state should have stayed the proceedings relating to Singleton's execution.\textsuperscript{343} The Singleton court incorrectly decided the state should execute Singleton when it disregarded precedent regarding the definition of insanity and precedent regarding how the court should use the definition to determine competency for execution when Singleton exhibited numerous mental delusions and obvious signs of mental illness.\textsuperscript{344}

B. The Singleton Court Incorrectly Determined That Forcible Medication Rendered a Person Competent

The Eighth Circuit in Singleton deviated from the seminal case regarding execution of the insane, Ford v. Wainwright,\textsuperscript{345} when it determined Singleton's execution was constitutional even though it was evident he was insane.\textsuperscript{346} The Eighth Circuit could have compromised in Singleton by finding mental incompetence did not void the death penalty, but required the postponement of the sentence until competence could be determined and achieved.\textsuperscript{347} The court correctly determined medicating Singleton was appropriate under a Harper order because he posed a danger to himself and others.\textsuperscript{348} However, once the Eighth Circuit agreed the physicians' forcible administration of medicine to Singleton was constitutional, it incorrectly decided Singleton met the competency test of Ford and thus, it created an unprecedented rule with an unconstitutional basis.\textsuperscript{349}

In Ford, the United States Supreme Court confirmed, based on the Eighth Amendment, the common law rule that prohibited the execution of mentally insane individuals.\textsuperscript{350} In 1974, the State of Florida convicted Ford of murder, at which time no evidence existed to sup-

\begin{itemize}
  \item \textsuperscript{341} See supra notes 300-12 and accompanying text.
  \item \textsuperscript{342} See supra notes 315-27 and accompanying text.
  \item \textsuperscript{343} See supra notes 327-40 and accompanying text.
  \item \textsuperscript{344} See supra notes 300-40 and accompanying text.
  \item \textsuperscript{345} 477 U.S. 399 (1986).
  \item \textsuperscript{346} See infra notes 350-66 and accompanying text.
  \item \textsuperscript{347} Compare Singleton, 319 F.3d at 1018-27 (stating Singleton's knowledge of his punishment while medicated was sufficient not to violate the Eighth Amendment ban on executing the insane), with Theuman, 111 A.L.R. 5TH 518 (stating that execution should be stayed until a prisoner is found sane without the aid of medication).
  \item \textsuperscript{348} See infra notes 369-78 and accompanying text.
  \item \textsuperscript{349} Id.
  \item \textsuperscript{350} Ford, 477 U.S. at 399, 401, 410.
\end{itemize}
port a finding of incompetency. When Ford's mental health subsequently deteriorated, three psychiatrists conducted a review of his condition; after receiving three different opinions by the doctors, the governor signed Ford's death warrant. The Ford court determined previous interpretations of the Eighth Amendment as well as the common law prohibited execution of the insane. In discussing the questionable retributive and deterrence value of an execution imposed on the insane, the Court noted executions have always offended humanity in exacting mindless vengeance. The court in Ford noted the principle remained in today's society, just as it had when the government enacted the Eighth Amendment, that if a prisoner could not understand the reasons for his penalty because of a mental illness, the state could not constitutionally execute him. The Court further explained, historically a stay of execution in cases of insane prisoners was not a matter debated judicially, but required by law. The Court recognized if Ford's incompetence prohibited him from understanding the link between his crime and his execution, the retributive value of the punishment was lost and that kind of mental deficiency should trigger an Eighth Amendment prohibition of the execution.

In Singleton, the court explained after a medication review panel collectively decided that Singleton posed a danger to himself and others in prison, that an involuntary medication regime was proper. The Eighth Circuit explained the state could forcibly medicate a prisoner with a severe mental illness if he posed a danger to himself and medication was in the prisoner's best medical interest. By upholding Singleton's involuntary medication order, the Eighth Circuit should have determined Singleton was insane and suffered from a mental illness.

The majority in Singleton should have further examined Singleton's medical condition in greater detail by exploring the prisoner's delusions, such as his belief his brother would come into his prison cell and take him out for walks. Singleton also believed demons possessed his cell, devices had been implanted into his ear by doctors who

351. Id. at 401.
352. Id. at 403-404.
353. Id. at 401, 410.
354. Id. at 407-408.
355. Id. at 399, 417.
356. Id. at 416.
357. Id. at 422 (Powell, J., concurring).
358. Singleton, 319 F.3d at 1021.
359. Id. at 1018, 1023, 1024.
360. See supra notes 358-59 and accompanying text.
361. Singleton, 319 F.3d at 1030-31 (Heaney, J., dissenting).
stole his thoughts, and the state had already executed him.\textsuperscript{362} When Singleton was not on medication he regressed into his delusional state, and at one time during his medication regime he was still exhibiting signs of hallucinations and mental illness.\textsuperscript{363} Singleton's conditions then worsened and he began to believe the Eighth Circuit had freed him because he was "God and the Supreme Court," but the state was still going to execute him because of a conspiracy against him.\textsuperscript{364}

Like Ford, Singleton displayed characteristics of insanity; however, unlike the \textit{Ford} Court, the \textit{Singleton} court declared Singleton was sane, competent, and therefore fit for execution while on medication.\textsuperscript{365} Ford and Singleton exhibited similar conditions, however the court in \textit{Singleton} opined Singleton understood his sentence enough to be executed, while the \textit{Ford} Court decided Ford's mental condition prohibited the state from executing him because he did not understand the reasons for his punishment.\textsuperscript{366} The similarities between Ford's and Singleton's conditions imply the state should not execute Singleton under the Eighth Amendment without greater review of his mental incompetence sans forced medication.\textsuperscript{367}

The Eighth Circuit did not rely solely on \textit{Ford} in considering the constitutionality of Singleton's execution and medication regime.\textsuperscript{368} The Eighth Circuit also relied on \textit{Washington v. Harper}\textsuperscript{369} in upholding the involuntary administration of medication to Singleton.\textsuperscript{370} In \textit{Harper}, the United States Supreme Court determined the state could medicate mentally ill prisoners against their will, if they posed a danger to themselves or to others.\textsuperscript{371} The Court contended the state could also forcibly medicate an inmate if the antipsychotic medication was in the prisoner's medical interest.\textsuperscript{372} Suffering from manic-depressive

\begin{itemize}
\item \textsuperscript{362} Id. (Heaney, J., dissenting).
\item \textsuperscript{363} Id. at 1031 (Heaney, J., dissenting).
\item \textsuperscript{364} Id. (Heaney, J., dissenting).
\item \textsuperscript{365} \textit{Compare Ford}, 477 U.S. at 419 (Powell, J., concurring) (explaining that the Eighth Amendment forbids the execution of prisoners in a specific mental state), \textit{with Singleton}, 319 F.3d at 1027 (stating "a State does not violate the Eighth Amendment as interpreted by \textit{Ford} when it executes a prisoner who became incompetent during his long stay on death row but who subsequently regained competency through appropriate medical care").
\item \textsuperscript{366} \textit{Compare Ford}, 477 U.S. at 417 (explaining that there is a long held principle against executing the insane because their mental condition does not allow them to fully comprehend their impending sentence), \textit{with Singleton}, 319 F.3d at 1027 (noting that \textit{Ford} only prohibits executing those who do not understand their sentence but this does not include those who understand their sentence when forcibly medicated).
\item \textsuperscript{367} See supra notes 350-66 and accompanying text.
\item \textsuperscript{368} See infra notes 369-78 and accompanying text.
\item \textsuperscript{369} 494 U.S. 210 (1990).
\item \textsuperscript{370} See infra notes 371-76 and accompanying text.
\item \textsuperscript{372} \textit{Harper}, 494 U.S. at 227.
\end{itemize}
disorder, the Court decided Harper was properly medicated even though his right to avoid unwanted medication was not insubstantial.\textsuperscript{373}

In \textit{Singleton}, the Eighth Circuit explained the state properly medicated Singleton and that on medication, Singleton has remained almost completely under control.\textsuperscript{374} The court held the state correctly ordered a mandatory medication regime under \textit{Harper} for Singleton's treatment.\textsuperscript{375} The \textit{Singleton} court explained the \textit{Harper} medication order did not become unconstitutional when the state set an execution date for Singleton.\textsuperscript{376}

In \textit{Harper}, the Supreme Court only determined the Due Process Clause permitted the state to administer medication against a prisoner's will when the medication was in the prisoner's medical interest, for the personal safety of the inmate, or for the safety of others — not that medication could be administered for execution.\textsuperscript{377} However, the \textit{Harper} court did not contend the state could forcibly medicate a prisoner for the purposes of punishment, unlike the court in \textit{Singleton} which explained, when the state set an execution date, forced medication was still constitutional even if used for punishment.\textsuperscript{378} The \textit{Singleton} court incorrectly interpreted the \textit{Harper} decision when it determined forced medication created the requisite competence for execution.\textsuperscript{379}

Further, other jurisdictions have required more stringent examination of incompetent death row inmates than the assessment the Eighth Circuit in \textit{Singleton} conducted.\textsuperscript{380} In \textit{State v. Perry},\textsuperscript{381} the Louisiana Supreme Court concluded the medicate-to-execute scheme imposed on Michael Perry ("Perry") by the lower courts interfered with his constitutionally protected right to decide whether to take medication.\textsuperscript{382} The trial court in Louisiana decided it would be proper

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\item \textsuperscript{373} \textit{Id.} at 214, 229.
\item \textsuperscript{374} \textit{Singleton}, 319 F.3d at 1018, 1026.
\item \textsuperscript{375} \textit{Id.} at 1026.
\item \textsuperscript{376} \textit{Id.}
\item \textsuperscript{377} \textit{Compare Harper}, 494 U.S. at 227 (explaining that the court had properly medicated Harper when he posed a danger to himself and it was in his medical interest), \textit{with Singleton}, 319 F.3d at 1021, 1026 (stating that Singleton was placed on medication involuntarily because of the danger he posed to himself and others, but adding the mandatory medication regime issued under \textit{Harper} does not become unconstitutional when the state sets a date of execution).
\item \textsuperscript{378} \textit{Compare Harper}, 494 U.S. at 227 (explaining that the court had properly medicated Harper when he posed a danger to himself and it was in his medical interest), \textit{with Singleton}, 319 F.3d at 1026 (stating the mandatory medication regime issued under \textit{Harper} does not become unconstitutional when the state sets a date of execution).
\item \textsuperscript{379} \textit{See supra} notes 369-78 and accompanying text.
\item \textsuperscript{380} \textit{See infra} notes 381-87 and accompanying text.
\item \textsuperscript{381} 610 So. 2d 746 (La. 1992).
\item \textsuperscript{382} \textit{State v. Perry}, 610 So. 2d 746, 748, 757 (La. 1992).
\end{itemize}
to forcibly medicate Perry who suffered from incurable schizoaffective disorder.\textsuperscript{383} The Louisiana Supreme Court noted the case presented the issue of whether a court could medicate a prisoner and then carry out his imposed death sentence.\textsuperscript{384} The Louisiana Supreme Court noted Perry would have to refuse medication, living a life filled with delusions, in order to avoid execution.\textsuperscript{385} The court stated forced medication did not violate a prisoner's rights, but forced medication administered solely to fulfill the government's interest of carrying out capital punishment did.\textsuperscript{386} The court concluded the execution of an insane prisoner, forcibly medicated, would not add to the goal of either deterrence or retribution for capital offenses and thus, to execute an insane prisoner in this condition was unconstitutional.\textsuperscript{387}

In \textit{Singleton}, the prisoner's mental condition deteriorated from anxiety and depression to schizophrenia.\textsuperscript{388} The dissent noted executing a man, who was insane without treatment and arguably insane while on medication, represented the pinnacle of barbarity inherent in executing the insane.\textsuperscript{389} The court added often prisoners on medication never return to a level of competency because their mental disorder becomes more severe over time.\textsuperscript{390} The \textit{Singleton} dissent rounded out its argument by explaining in Singleton's situation, the prisoner was never symptom free and thus, determining his sanity at any given point would be very difficult.\textsuperscript{391}

Like Perry, Singleton was insane and then placed on antipsychotic medication involuntarily.\textsuperscript{392} As with the \textit{Perry} court, the \textit{Singleton} majority should have noted the unconstitutionality of executing an incompetent individual even if they were under an involuntary medication regime.\textsuperscript{393} However, the \textit{Singleton} court disagreed with the \textit{Perry} and \textit{Ford} courts and contended \textit{Ford} only banned the execution of individuals who did not understand their sentence, which the

\begin{itemize}
\item \textsuperscript{383} \textit{Perry}, 610 So. 2d at 748.
\item \textsuperscript{384} \textit{Id.} at 746, 749.
\item \textsuperscript{385} \textit{Id.} at 746, 757.
\item \textsuperscript{386} \textit{Id.} at 758.
\item \textsuperscript{387} \textit{Id.} at 761.
\item \textsuperscript{388} \textit{Singleton}, 319 F.3d at 1030-31 (Heaney, J., dissenting).
\item \textsuperscript{389} \textit{Id.} at 1030 (Heaney, J., dissenting).
\item \textsuperscript{390} \textit{Id.} at 1033 (Heaney, J., dissenting).
\item \textsuperscript{391} \textit{Id.} at 1034 (Heaney, J., dissenting).
\item \textsuperscript{392} \textit{Compare Perry}, 610 So. 2d at 748 (explaining that the lower court had ordered that Perry remain on antipsychotic medication to sustain his competence), \textit{with Singleton}, 319 F.3d at 1021 (stating that Singleton was placed on medication involuntarily because of the danger he posed to himself and others).
\item \textsuperscript{393} \textit{Compare Perry}, 610 So. 2d at 748 (explaining that the lower court had ordered that Perry remain on antipsychotic medication to sustain his competence), \textit{with Singleton}, 319 F.3d at 1037 (Heaney, J., dissenting) (explaining that the state may medicate Singleton but it cannot use that artificial competence to then execute him).
\end{itemize}
court alleged Singleton did on medication.\textsuperscript{394} The analysis of Singleton's case was incorrect because Singleton was insane and thus, the Constitution barred his execution; however, even under the test derived from the \textit{Ford} concurrence, Singleton was not competent for execution because he thought his victim was still alive and therefore, was incapable of understanding his sentence.\textsuperscript{395}

Singleton's psychotic symptoms demonstrated his insanity.\textsuperscript{396} Singleton's condition did not completely subside when the state placed him on antipsychotic medication.\textsuperscript{397} As such, the Eighth Circuit incorrectly determined a prisoner on a forcible medication regime is competent because of the medication he or she received, instead of establishing Singleton's actual medical condition of medication.\textsuperscript{398}

\section*{C. \textbf{THE SINGLETON COURT ERRONEOUSLY FAILED TO NOTE THAT SANITY ACHIEVED THROUGH FORCED MEDICATION DID NOT RENDER A PRISONER SANE BUT ONLY CREATED AN ARTIFICIAL COMPETENCE}}

The Eighth Circuit incorrectly determined artificial competence permits a state to execute an insane prisoner.\textsuperscript{399} The \textit{Ford} court did not examine whether the state could achieve the Eighth Amendment's requirement of legal sanity for execution through forced medication.\textsuperscript{400} The \textit{Singleton} court should not have rendered Singleton competent due to forcibly administered medication only to set his execution date.\textsuperscript{401} When a court forcibly medicates a prisoner and then sets an execution date, the state has essentially created an individual with artificial competency.\textsuperscript{402} The \textit{Singleton} court, in justifying the execution, indicated bringing Singleton to justice outweighed any liberty interest Singleton may have had.\textsuperscript{403} Because Singleton did not contest his guilt, the medicate-to-execute scheme of the Eighth Circuit
offered a disquieting attempt to avoid compliance with the Constitution and its principles.\footnote{See infra notes 405-34 and accompanying text.}

Situations in \textit{Ford} only arise after a proper conviction where the state has a legitimate interest in executing the criminal involved.\footnote{\textit{Ford}, 477 U.S. at 418, 425.} The question should concentrate on \textit{when}, and not \textit{whether}, a state can execute a prisoner.\footnote{\textit{Id.}} Justice Powell added in his concurrence, although some prisoners may never recover from their mental disorder, it is only when a state cured an inmate of his disease that the state could execute him.\footnote{\textit{Id.} at 418, 425 n.5.}

Circuit Judge Gerald Heaney noted, in his \textit{Singleton} dissent, the purpose of the medication administered to Singleton, and others like him, was for stabilization and not to provide a cure.\footnote{\textit{Singleton}, 319 F.3d at 1033 (Heaney, J., dissenting).} There is a consensus among psychiatrists and those in the medical realm that drugs used to treat mental illness provide only temporary relief and do not cure the illness.\footnote{\textit{Id.} at 1033-34 (Heaney, J., dissenting).} Circuit Judge Heaney continued his discussion of Singleton’s artificial competence by explaining that, although antipsychotic drugs improve a prisoner’s mental state, the drugs’ effects are often inexact and temporary.\footnote{\textit{Id.}} The dissent further explained the unpredictability of antipsychotic drugs and the reality that prisoners may exhibit signs of their mental illness even while on the medication.\footnote{\textit{Id.}} Antipsychotic medication administered to make prisoners “sane” creates a coerced state, which falls short of rendering them competent for execution.\footnote{\textit{Id.}}

Judge Heaney clarified that Singleton’s situation provided exemplary evidence of the unpredictable nature inherent in the drugs used to treat insanity.\footnote{\textit{Id.} at 1030-34 (Heaney, J., dissenting).} A review of Singleton’s medical history established Singleton often had to change medication regiments, was quick to exhibit signs of deteriorating mental conditions without medication, and even displayed signs of insanity while on medication.\footnote{\textit{Id.}} Because Singleton’s treatment plan never kept him free of symptoms, the dissent noted it would be near impossible to adequately determine Sin-
gleton's competence, in compliance with the Constitution and the ruling in *Ford*, at the time of execution.415

Singleton presented a temporary span of sanity under a forced medication regime, but the medication did not completely cure Singleton.416 Similar to the prisoner in *Ford*, Singleton was still insane at the time of the decision; however, contrary to the *Ford* court, the *Singleton* court held Singleton was sane for execution purposes.417 The antipsychotic medication never cured Singleton of his illness, but merely muted his symptoms.418 Essentially, Singleton remained insane; thus, *Ford* should have applied no less so than if Singleton was void of medical interference.419

Further, the Eighth Circuit failed to examine case law from other circuits in examining Singleton's artificial competence.420 In *Rohan v. Woodford*,421 the Ninth Circuit examined Oscar Gates' ("Gates") right to a stay of proceedings until he regained his competency.422 After his conviction, Gates began to experience irrational delusions, suffering from a mental condition known as hyergraphia.423 The Ninth Circuit noted states have long barred execution of the insane.424 The Ninth Circuit then transformed this base constitutional belief into a decision that prohibited further proceedings in the case until a court found Gates competent enough to communicate with counsel.425

Singleton was also incompetent, experiencing delusions where his food and cigarettes would turn to bones and worms.426 The majority neglected to explain that Singleton was at times intelligible and unable to communicate with anyone.427 Singleton's doctors explained that Singleton had become worse, not better, over the years in prison.428 The courts should have held the state could execute Single-
ton, but not until he had regained a competency threshold sufficient to pass judicial prohibition against executing the insane.429

Unlike the Rohan court, which concluded Gates’ mental condition, even though treated with medication, prohibited the court from holding proceedings regarding his case until he became competent, the Singleton majority concluded even though Singleton was suffering from a mental condition, he was competent enough on medication for the state to execute him.430 Thus, the rationale in Singleton once again conflicted with precedent, albeit from another circuit, by concluding the state should execute Singleton despite his mental state even though Rohan concluded, in the same situation, a prisoner was not even competent enough to participate in a judicial proceeding.431

The Ford, Perry, and Rohan courts all correctly examined the Eighth Amendment’s ban on executing the insane and, unlike the Singleton court, correctly noted prisoners should only be subject to proceedings and subsequent execution when they are competent without medication.432 Antipsychotic medications create an artificial competency that should not be equated to real sanity.433 The Singleton court incorrectly explained sanity reached through forced medication rendered a prisoner sane enough for execution, even though other courts have stated forced medication only creates an artificial competence not sufficient for execution.434

CONCLUSION

In Singleton v. Norris,435 the United States Court of Appeals for the Eighth Circuit vacated Singleton’s stay of execution, determining the state properly medicated Singleton.436 With proper medication, designed to control and protect Singleton, administered after conviction and sentencing, the Eighth Circuit claimed Singleton knew of his execution and the reasons behind the sentence.437 This knowledge, the court reasoned, was sufficient to establish under Ford v. Wain-

429. Id. at 1033, 1034, 1037 (Heaney, J., dissenting).
430. Compare Rohan, 334 F.3d at 808 (claiming that a prisoner must have the ability to communicate with a lawyer as a central feature of the Due Process Clause of the Constitution), with Singleton, 319 F.3d at 1027 (explaining that executing the insane does not violate the Eighth Amendment).
431. Compare Rohan, 334 F.3d at 819 (stating that “further proceedings in [the] case must be stayed until Gates is competent”), with Singleton, 319 F.3d at 1027 (“denying Singleton’s petition for writ of habeas corpus and vacate the stay of execution”).
432. See supra notes 399-431 and accompanying text.
433. Id.
434. Id.
435. 319 F.3d 1018 (8th Cir. 2003).
437. Singleton, 319 F.3d at 1018, 1026, 1027.
that Singleton was competent. However, the court reached this decision through improper interpretation of precedent, the Constitution, and the nation's common law, which showed the state should not and may not execute insane individuals, medicated or not.

In Singleton, the Eighth Circuit incorrectly held that Singleton was sane and improperly determined the level of competence needed for the state to execute a prisoner under the Eighth Amendment. Furthermore, the Eighth Circuit incorrectly determined Singleton's sanity under the Ford standard of sentence comprehension because Singleton exhibited signs of mental illness on and off medication, and at times believed the Eighth Circuit had freed him. Next, the Singleton court was not only wrong in determining Singleton's sanity for purposes of execution, but it should have stayed the proceeding regarding the execution because of Singleton's incompetence. In addition, the Singleton court erroneously determined, although properly medicated, the state could use forced medication to determine Singleton's competency for execution. Finally, the Eighth Circuit incorrectly found a forcible medication regime created an actual competence which the state could use to determine a prisoner's competency for execution.

Medical competency restored through a forced medication regime does not create sanity; it merely offers a blanket to hide the mental scars. Even then, the blanket occasionally slips off revealing that symptoms resurface even with medication. Medical professionals have compared antipsychotic medication to such drugs as penicillin, which are both used to cure disease. However, this comparison is misguided because it neglects to consider that penicillin offers a cure to bacteria, while antipsychotic medications offer no cure for incompetence. In addition, if the state knew without a doubt the antipsychotic medication it was administering would result in a prisoner's death, the state would not allow the prison to administer the drug to inmates, yet the state, with the Eighth Circuit's consent, has administered a drug that will essentially allow for a prisoner to die. This is merely a method for the court to carry out sentences that

439. Singleton, 319 F.3d at 1027.
440. See supra notes 284-434 and accompanying text.
441. See supra notes 306-27 and accompanying text.
442. See supra notes 420-31 and accompanying text.
443. See supra notes 345-98 and accompanying text.
444. See supra notes 399-434 and accompanying text.
446. Swedlow, 10 Hum. Rts. Q. at 4.
directly contradict the Constitution. By creating an artificial competence in mentally insane criminals, the courts can execute individuals whose execution would normally be banned under both the Eighth Amendment and the Ford ruling. In a society that some argue has become too soft on crime, citizens often support the death penalty. After all, the court has properly convicted and sentenced these criminals. However, the nation has its Constitution and its common law, both of which support the notion the execution of the insane is inhumane and prohibited. The courts cannot use artificial sanity created by forcible medication, which fails to cure a prisoner of his mental disorders and occasionally even fails to mask those disorders, to declare a prisoner Ford competent. Thus, the Eighth Circuit should have issued a temporary stay of execution for Singleton until such time that he exhibited no signs of mental illness when off his medication.

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