

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR OKALOOSA COUNTY, FLORIDA**

STATE OF FLORIDA,

Plaintiff,

v.

**Case No. 87-CF-856
Div. 002**

FRANK A. WALLS,

Defendant.

**ORDER DENYING DEFENDANT'S MOTION IN LIMINE REGARDING THE
STANDARD OF PROOF FOR AN INTELLECTUAL DISABILITY CLAIM**

THIS CAUSE is before the Court on Defendant's Motion in Limine Regarding the Standard of Proof for an Intellectual Disability Claim, filed on August 16, 2019. Also before the Court is the State's Response, filed on August 28, 2019. On September 27, 2019, the Court heard the arguments of the parties on the matter. Having reviewed the motion, response, record, and having considered the arguments of the parties and the applicable law, the Court finds as follows:

Background

Defendant is a prisoner under sentence of death. On October 20, 2016, the Supreme Court of Florida reversed this Court's denial of Defendant's post conviction intellectual disability claim and remanded for this Court to conduct an evidentiary hearing.¹ The hearing is scheduled to begin on March 23, 2020.

¹ Walls v. State, 213 So. 3d 340, 341 (Fla. 2016), reh'g denied, SC15-1449, 2017 WL 74847 (Fla. Jan. 9, 2017), and cert. denied sub nom. Florida v. Walls, 138 S. Ct. 165 (2017).

The Present Motion

Defendant argues that applying the clear and convincing standard to a claim of intellectual disability is unconstitutional. Defendant argues that “Florida’s statute fails to protect intellectually disabled people, like Mr. Walls, from illegal execution and is at odds with almost every other jurisdiction in the nation.” Defendant argues that “[m]ild intellectual disability, a medical standard subject to numerical ranges, standards of error, and analysis of deficits over broad categories of adaptive functioning, is rarely, if ever, clear and convincing.” Defendant argues that “[t]he clear and convincing standard of evidence ensures that a subtle diagnosis of mild intellectual disability will not meet the terms of Florida’s statute, and as such it is unconstitutional.” Defendant relies in part on Cooper v. Oklahoma,² a case in which the Supreme Court of the United States determined that Oklahoma’s requirement that a defendant prove incompetency by clear and convincing evidence was unconstitutional. Defendant argues that “[t]he intellectually disabled are no less deserving of constitutional protection than the incompetent.” Defendant argues that the clear and convincing standard as applied to determinations of intellectual disability in Florida is unconstitutional under Cooper.

Defendant also argues that the “clear and convincing standard is not used in any other context within Florida criminal law” and states that “[i]n the balancing of mitigating and aggravating factors in Florida’s capital sentencing scheme, the prosecution must prove aggravating factors beyond a reasonable doubt, whereas the defense bears the burden of proving mitigating factors by a preponderance of the evidence standard only.”

Legal Authority

Cruel and unusual punishments are prohibited by the Eighth Amendment. It is unconstitutional to execute an intellectually disabled person. Atkins v. Virginia, 536 U.S. 304,

² Cooper v. Oklahoma, 517 U.S. 348 (1996).

321 (2002). Florida law requires the defendant to prove intellectual disability by clear and convincing evidence. § 921.137(4), Florida Statutes (2019); Wright v. State, 256 So. 3d 766, 771 (Fla. 2018) (“To demonstrate ID, a defendant must make this showing by clear and convincing evidence.”); Snelgrove v. State, 217 So. 3d 992, 1002 (Fla. 2017) (“The defendant has the burden to prove by clear and convincing evidence that he is intellectually disabled.”).

Discussion

The State’s response to the present motion points the Court to the *rejection* by the Supreme Court of Florida of a similar claim that, under Cooper, Florida Rule of Criminal Procedure 3.812—which requires a capital case defendant to prove insanity by clear and convincing evidence—is unconstitutional. Medina v. State, 690 So. 2d 1241, 1246–47 (Fla. 1997); see also Provenzano v. State, 750 So. 2d 597, 603 (Fla. 1999). Consequently, since the clear and convincing standard required by rule 3.812 has been found constitutional and is the law in Florida, Defendant’s assertion that the “clear and convincing standard is not used in any other context within Florida criminal law” is not well taken. Moreover, because the Supreme Court of Florida has found that it is constitutional to require a defendant to prove a claim of insanity by clear and convincing evidence, it follows that requiring a defendant to prove intellectual disability by clear and convincing evidence is also constitutional. This Court is bound to follow the law of the State of Florida and the rulings of the Supreme Court of Florida. See State v. Lott, 286 So. 2d 565, 566 (Fla. 1973). Accordingly, the Court finds that it should deny the present motion.

The Court notes that if the Court were not bound to follow the aforementioned law, the Court would find that the preponderance of the evidence standard should apply to claims of intellectual disability. The death penalty is a “unique and irreversible” punishment. Woodson v.

North Carolina, 428 U.S. 280, 287 (1976). Indeed, “[t]he death penalty is the gravest sentence our society may impose.” Hall v. Florida, 572 U.S. 701, 724 (2014). “Persons facing that most severe sanction must have a fair opportunity to show that the Constitution prohibits their execution.” Id. Accordingly, it appears to this Court that the risk of unlawfully executing an intellectually disabled person due to application of the clear and convincing evidence standard outweighs the State’s interest in imposition of the death penalty. In this regard, Defendant’s argument that mitigating circumstances must only be proven by a preponderance of the evidence is persuasive. Since a defendant need only prove mitigating circumstances by a preponderance of the evidence, it seems that the same burden should apply to a claim of intellectual disability.

However, as stated previously in this Order, the Court must follow the law of Florida and the rulings of the Supreme Court of Florida that indicate the clear and convincing standard is the appropriate standard to be applied to a claim of intellectual disability.

Ruling

Therefore, it is **ORDERED AND ADJUDGED** that Defendant’s Motion in Limine Regarding the Standard of Proof for an Intellectual Disability Claim is **DENIED**.

DONE AND ORDERED in Fort Walton Beach, Okaloosa County, Florida.

WFS/eeb


eSigned by CIRCUIT COURT JUDGE WILLIAM STONE
on 10/28/2019 16:38:17 HNS31irH

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing Order has been furnished by e-Service (unless otherwise indicated) to:

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