

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT
IN AND FOR BRADFORD COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

vs.

DUANE E. OWEN,

Defendant.

CASE NO.: 04-2023-CA-000264

EMERGENCY CAPITAL CASE
DEATH WARRANT SIGNED
EXECUTION SCHEDULED FOR
JUNE 15, 2023 AT 6:00 P.M.

FILED IN OFFICE OF CLERK OF COURT

ON THE 4TH DAY OF JUNE, 2023

AT 3:30 P.M.

DENNY THOMPSON
Clerk of Circuit Court

By Denny Thompson Deputy Clerk

ORDER FINDING DUANE E. OWEN SANE TO BE EXECUTED

THIS CAUSE comes before the Court upon the defendant Duane E. Owen's "Motion for Stay of Execution and Determination of Sanity to be Executed Pursuant to Florida Rule of Criminal Procedure 3.811," filed June 1, 2023, pursuant to Fla. R. Crim. P. 3.811(d) and 3.812. The parties stipulated that there are reasonable grounds to believe that Mr. Owen is insane to be executed; and, pursuant to rule 3.812, a hearing was held on June 1-2, 2023. Upon consideration of the motion, the State's response to the motion, the written materials provided by the parties, and the evidence and testimony presented at the rule 3.812 hearing, this Court finds and concludes that Duane E. Owen is sane and competent to be executed and makes the following findings:

PROCEDURAL HISTORY

The defendant, Duane Eugene Owen ("Owen"), is under an active death warrant, signed by the Governor on May 9, 2023, based on the affirmance of his 1986 conviction and sentence for the burglary, sexual assault, and first-degree murder of a Boca Raton mother, GW, whose body was discovered by her children on May 29, 1984. Owen v. State, 596 So. 2d 985 (Fla. 1992), cert. denied, Owen v. Florida, 506 U.S. 921 (1992). Owen was also convicted and sentenced to death for first-degree murder, "attempted sexual battery with a deadly weapon ... and burglary of a

dwelling while armed" of 14-year-old female, KS. Owen v. State, 862 So. 2d 687 (Fla. 2003) (affirming conviction and sentence). In the trial for KS's murder, Owen asserted the defense of insanity at the time of the crime based on a delusional disorder, and schizophrenia. These defenses were rejected. The jury later voted for death.

In the GW murder litigation, Owen litigated three motions for postconviction relief and their related appeals and the attendant state habeas petition. Owen v. State, 773 So. 2d 510 (Fla. 2000) (finding Owen's waiver of postconviction claims/evidentiary hearing was valid), cert. denied, Owen v. Florida, 532 U.S. 964 (2001); Owen v. Crosby, 854 So. 2d 182 (Fla. 2003) (finding summary denial of successive challenge to waiver of original postconviction claims was proper and no merit to claims of ineffective assistance of appellate counsel); and Owen v. Crosby, 247 So. 3d 394 (Fla. 2018) (rejecting claim based on Hurst v. Florida, 572 U.S. 92 (2016), cert. denied, Owen v. Florida, 139 S. Ct. 1171 (2019)). Also, Owen unsuccessfully pursued federal habeas relief. Owen v. Sec'y for Dept. of Corr., 568 F.3d 894 (11th Cir. 2009), cert. denied, 558 U.S. 1151 (2010).

During his litigation under an active death warrant, Owen had Dr. Hyman Eisenstein evaluate him. On May 16, 2023, Dr. Eisenstein submitted a report finding Owen insane to be executed. The following day, Owen filed a fourth motion pursuant to Florida Rule of Criminal Procedure 3.851, claiming incompetence and notifying the circuit court that he would be filing a letter with the Governor under section 922.07(1) asserting Owen was insane to be executed. Upon receipt of the letter, on May 19, 2023, the Governor, as provided under section 922.07(1), authorized an independent three-panel commission of psychiatrists to evaluate Owen. That was

completed and on May 24, 2023, a report was issued finding Owen to be malingering, had an antisocial personality disorder, and was sane to be executed.

On June 1, 2023, Owen filed a motion stay execution and determination of sanity to be executed pursuant to Florida Rule of Criminal Procedure 3.811(d). The State filed a response. On June 1-2, 2023, an evidentiary hearing occurred to determine Owen's sanity to be executed.

LEGAL STANDARD FOR SANITY DETERMINATION

Under Rule 3.812(e), the prisoner has the burden to establish by clear and convincing evidence that he is insane to be executed.¹ Under Florida law the standard for determining whether a prisoner is insane to be executed is whether he "lacks the mental capacity to understand the fact of the impending execution and the reason for it." Mr. Owen has claimed that this means that as set forth in Panetti v. Quarterman, 551 U.S. 930, 956 (2007), this Court in making that determination must also consider whether he has a mental illness that obstructs a rational understanding of the State's reason for his execution. The State has asserted that under Panetti the test that has existed since Ford v. Wainwright, 477 U.S. 399 (1986) is still the appropriate standard, i.e., whether he lacks the mental capacity to understand the fact of the impending execution and the reason for it. This Court finds that what Panetti elaborates on is the requirement that, in deciding that issue, the court has to consider whether the prisoner's mental capacity includes a "rational understanding," which the U.S. Supreme Court did not define. 551 U.S. at 959. However, it did note that the mental state requisite for competence to suffer capital punishment neither presumes nor requires a person who would be considered "normal," or even "rational," in

¹ Although that is the standard set forth in the statute, this Court will also review the evidence under the lower standard of preponderance of the evidence.

a layperson's understanding of those terms. *Id.* at 959-960. This Court finds that Panetti does not add anything to Florida's determination of insanity to be executed. The Florida Supreme Court in Provenzano v. State, 760 So. 2d 137 (Fla. 2000), considered the difficulties of persons who have mental illnesses and delusions, and held that such person could still be found competent to be executed when that person "had a factual and rational understanding" of the details of his trial; conviction; jury recommendation of death; whose murder he was sentenced to die for; and, that he will physically die once he is executed.

HEARING TESTIMONY AND RELATED EVIDENCE

Dr. Hyman Eisenstein, a board-certified neuropsychologist licensed in Florida who has previously testified in approximately 100 capital cases exclusively on behalf of capital defendants, testified that he interviewed Mr. Owen two (2) times: on May 15, 2023 6 hours, and May 30, 2023 for 7 hours and 15 minutes. He also administered cognitive and neuro-psychological testing. According to Dr. Eisenstein, one interview is not sufficient, and 100 minutes of interview time is not sufficient, in part because Mr. Owen is reticent in talking about his specific delusion. Dr. Eisenstein stated Mr. Owen was cooperative, polite, kept his head down and faced away from the evaluator most of the time and showed little emotion.

Dr. Eisenstein testified that Mr. Owen was tested at average intelligence; tested on the MMPI2 with a floating pathology (every category tested above normal); and showed no signs of malingering. Dr. Eisenstein testified that Mr. Owen was a passive individual who possessed no violent tendencies. Dr. Eisenstein opined that Mr. Owen suffers from schizophrenia and further testified that Mr. Owen exhibits a fixed delusional thinking that is far removed from reality, and which has been consistent over time. Finally, Dr. Eisenstein testified that Mr. Owen is

experiencing the onset of a dementia process.

Dr. Eisenstein opined that based upon Mr. Owens mental health history and psychological testing, Mr. Owen suffers from schizophrenia. Also, the prison guards and inmates who are in daily contact with Mr. Owen would not see any manifestations of his mental illness, or his reactions to them, because he currently hides his delusions and illness. Dr. Eisenstein further testified that Mr. Owen's core delusion is the belief that the crimes he committed would turn him into a female. Mr. Owen committed the crimes in an effort to have the female hormones and essence of women transferred to him. Mr. Owen was under the delusional belief that the victim he killed would live on and enter his body. Mr. Owen believes he is a female inside of a male body.

As other court opinions have noted, Mr. Owen has raised these issues or those of a similar nature multiple times and they have been rejected in state and federal court each and every time. See Owen v. State, 773 So.2d 510 (Fla. 2000), cert. denied, Owen v. Florida, 532 US 964 (2001); Owen v. Crosby, 854 So.2d 182 (Fla. 2003); Owen v. Sec'y for Dept. of Corr., 568 F.3d 894 (11th Cir. 2009, cert. denied, 558 US 1151 (2010).

Considering the above, Dr. Eisenstein opined that Mr. Owen lacks the mental capacity to understand the fact of his pending execution and the reason for it and that Mr. Owen does not have a rational understanding of the reason for his death sentence and scheduled execution.

On cross-examination, Dr. Eisenstein was confronted with the fact that he has testified only exclusively for the defense in capital cases and that approximately 80% of his income is derived from that work. Dr. Eisenstein was confronted with a statement he testified to on direct examination that "Patients don't lie". Dr. Eisenstein appeared hesitant to accept the distinction between a patient interview in a clinical setting versus a forensic setting (such as an incarcerated

inmate facing possible imminent execution). Dr. Eisenstein was asked about some of the underlying facts from Mr. Owen's criminal convictions that were inconsistent with his self-reported delusions. For example, Mr. Owen's delusion was that his penis had to be inside his victims at the time he murdered them because his penis was the conduit to receiving their feminine essence and or soul. Yet, in one of his attacks, he had penetrated the victim with a sharp object such as a hammer. Additionally, Mr. Owen took steps to evade or avoid capture; removed clothes to avoid blood staining; showered after the murders; and concocted a false alibi. It was not clear that Dr. Eisenstein was even aware of the existence of these inconsistencies. And if he was, he apparently did not consider them. In fact, Dr. Eisenstein admitted that he did not confront Mr. Owen with any facts inconsistent with his reported delusions. However, Dr. Eisenstein did admit that if Mr. Owen's delusion was not credible, then neither would his schizophrenia diagnosis be credible. In other words, without a credible delusion, Mr. Owen is not schizophrenic. Dr. Eisenstein conceded that Mr. Owen had never requested any medication for schizophrenia and the Department of Corrections had never determined Mr. Owen to need any such medication. Dr. Eisenstein was confronted about his testimony on direct that Mr. Owen's delusion has been fixed and consistent over time. Yet, Dr. Eisenstein was forced to concede that in approximately 20 hours of police interrogation in 1984, Mr. Owen never once mentioned this delusion. Instead, Mr. Owen told law enforcement that he didn't know why he raped other than he liked to get away with things. Further, Mr. Owen generally admitted to approximately 7 rapes and 5 murders and other crimes not known to the police stating he would hold onto that information and use it to delay his execution. Additionally, Dr. Eisenstein was confronted with the doctor's evaluation of Mr. Owen in 1984 which found the defendant to be antisocial. Mr. Owen never even suggested to the officers

who questioned him, and to whom he confessed in 1984, that a mental illness caused him to kill. Dr. Eisenstein acknowledged on cross examination that the first time the current reported delusion of Mr. Owen arose was in 1996 in preparation of a retrial. Dr. Eisenstein was confronted concerning his statement on direct examination that Mr. Owen was passive with no violent tendencies with the fact that he had committed approximately 6 violent rapes, 2 murders and an attempted murder. Dr. Eisenstein presents as either incredibly naïve or intentionally and willfully naïve. The court does not find Dr. Eisenstein's testimony to be credible when evaluated against all the other testimony and other evidence in the case.

Carey Haughwout, one of Mr. Owen's former attorneys who represented him in the 1992-1999 and who has since maintained some level of contact with Mr. Owen testified. Ms. Haughwout's testimony was not particularly relevant or helpful to the issue before the court in this hearing.

Pamela Izakowitz, one of Mr. Owen's former attorneys who represented him in a post-conviction matter in 1997 and who met with Mr. Owen several times during that representation testified. She testified that Mr. Owen shared his delusion with her in those meetings in 1997. Ms. Izakowitz's testimony was not particularly relevant or helpful to the issue before the court in this hearing.

Lisa Wiley, a retired psychological specialist who worked at the Department of Corrections from 1989 until 2005, and specifically on Death Row at Union Correctional Institution from 1992-2005, also testified. Her job was to provide mental health services to inmates when needed. Ms. Wiley testified that during the time she was assigned to death row Mr. Owen became a regular patient of hers who she saw approximately once every month. She noted in the medical records

in 1996 that Mr. Owen told her he didn't like having male genitalia and that he wanted to be a female. On cross examination Ms. Wiley stated that she was not aware of any of the inmates cases, or whether they were pursuing any courtroom strategies that might impact their presentations to her. She testified that she saw no evidence that the defendant suffered from schizophrenia and that he was never medicated for schizophrenia. Ms. Wiley further added that Mr. Owen did not present in any way consistent with a diagnosis of schizophrenia and that he never sought services for gender identity issues after his retrial had concluded. On redirect, Ms. Wiley testified that she didn't have any reason to think Mr. Owen was malingering.

The court considered the affidavit of Dr. Faye Sultan who was unable to personally appear and testify. The parties agreed that her testimony would have been consistent with her affidavit and that she had not seen or had contact with Mr. Owen since 1999 (approximately 24 years). Dr. Sultan did not specifically opine on Mr. Owen's current mental status or competency to be executed, nor would she have any relevant factual basis to do so.

The court also considered the affidavit of Dr. Frederick Berlin who was unable to personally appear and testify. The parties agreed that his testimony would have been consistent with his affidavit and that he has not seen or had contact with Mr. Owen since 1996 (approximately 27 years). Dr. Berlin did appear to opine on Mr. Owen's current mental status and competency to be executed, despite not having any relevant factual basis to do so. Quite remarkably, Dr. Berlin's affidavit opines that Mr. Owen was legally insane at the time he committed his crimes. Additionally, Dr. Berlin opines Mr. Owen is still to this day suffering from chronic schizophrenia and "not of sound mind". Dr. Berlin's affidavit appears to be an obvious departure from the methods of the profession to render a current opinion without an examination and without

conducting an evaluation in accordance with the standards of psychiatric practice. Dr. Berlin's behavior compromises both the integrity of the psychiatrist and of the profession itself. This court finds that Dr. Berlin's affidavit has zero credibility and that his affidavit should not be relied upon in any way.

In response to the defense experts' testimony, the State presented testimony from Dr. Tonia Werner. Dr. Werner is the Chief Medical Officer at Meridian Behavioral Healthcare for the past 7 years. She is Board Certified in general and forensic psychiatry. She has been appointed in approximately 5 Governor Commissions. She has worked with and treated thousands of individuals diagnosed with schizophrenia. Dr. Werner along with Dr. Wade Myers and Dr. Emily Lazarou conducted an evaluation of Mr. Owen on May 23, 2023. The purpose and non-confidential nature of the evaluation were explained to Mr. Owen. The interview of Mr. Owen by the Commission lasted approximately ninety (96) minutes.

Dr. Werner testified that Mr. Owen was calm and cooperative throughout the interview and maintained good eye contact. He was well groomed and there were no indication of feminine qualities or mannerisms. He answered all questions in a logical, coherent and goal directed manner. Mr. Owen was very personable, very interactive, even laughing at one point. His IQ was not tested but was judged by the Commission to be in the high average range based on the interview. The Commission was also provided with and reviewed medical, mental health and correctional records from 1986 to the present. Additionally, investigative materials from Mr. Owen's murder cases were provided and reviewed. The Commission also separately and individually interviewed multiple Department of Corrections personnel with approximately 14 years of experience with Mr. Owen.

Dr. Werner testified that Mr. Owen disclosed and openly discussed his delusions immediately with the Commission. Dr. Werner stated that it takes more than one delusion to meet a diagnosis of schizophrenia and if the delusion was determined to be untrue or false, then any and all diagnosis' would be affected. Dr. Werner and the Commission concluded that Mr. Owen's delusion was feigned or malingered. Dr. Werner testified that if the delusion were true then you would expect to see it manifest itself in all of Mr. Owen's behaviors, actions, mannerisms, dress, and how he holds himself out overall. This is not the case and has almost never been the case with Mr. Owen. Additionally, Mr. Owen was confronted with the facts of his cases that were inconsistent with his self-reported delusion and was unable to match that facts to his delusion and unable to satisfactorily explain those inconsistencies.

Dr. Werner testified that Mr. Owen has only been prescribed two anti-depressants and one medication for anxiety during his entire time in prison. Dr. Werner stated that people with schizophrenia are assisted in remaining stable by the use of medication. And if unmedicated for approximately 40 years you would expect to see a documented downward drift in the level of functioning over the years. There is no such evidence or report of this as it relates to Mr. Owen.

Dr. Werner testified that the MMPI2 results testified to by Dr. Eisenstein are more consistent with malingering. Specifically, the concept of a "floating profile" actually means that every category of the test is above normal which represents an over acknowledgment of symptoms, or malingering. Dr. Werner further testified that Dr. Eisenstein's testimony that "Patients don't lie" was seriously flawed when considered in this forensic setting. Further, that treating Mr. Owen as a patient rather than an evaluatee was not appropriate.

Dr. Werner testified that Mr. Owen specifically told the Commission that the State of

Florida was going to kill him for having killed the two women; but that sadly enough that's what he did; and that he didn't know how they think it was okay to kill him for killing them. These statements very clearly demonstrate Mr. Owen understands the nature and effect of the death penalty and why it is to be imposed on him.

Dr. Werner testified that, based on the clinical interview, review of the records, and interviews with correctional employees, it was the opinion of the Commission with a reasonable degree of medical certainty that Mr. Owen (1) has no mental illness, (2) is feigning psychopathology (malingering) to avoid the death penalty, (3) has an Antisocial Personality Disorder, and (4) understands the nature and effect of the death penalty and why it is to be imposed on him.

In response to the defense experts' testimony, the State also presented testimony from Dr. Wade Myers. Dr. Myers is a Professor of Psychiatry at Brown University for the past 14 years. He is licensed to practice psychiatry in both Florida and Rhode Island and is Board Certified in general psychiatry; forensic psychiatry; and child adolescent psychiatry. He has been appointed to approximately 10 Governor Commissions. He has seen thousands of individuals diagnosed with schizophrenia during his career and clinical practice. Dr. Myers along with Dr. Tonia Werner and Dr. Emily Lazarou conducted an evaluation of Mr. Owen on May 23, 2023.

Dr. Myers testified that Mr. Owen immediately and readily shared his odd beliefs but that Dr. Myers did not in any way believe they were delusions. Dr. Myers stated that these beliefs appeared to have come on years after Mr. Owen was first convicted of murder. Dr. Myers stated that true delusions are very powerful and influential on one's life and that one would have expected Mr. Owen to be talking about these delusions to the people he interacted with early on if he really

had such delusions at and around the time of the original crimes. Additionally, Dr. Myers testified that he saw no signs of any type of thought disturbance in Mr. Owen that would be consistent with schizophrenia or delusional thinking. Dr. Myers stated that based on the thousands of people with schizophrenia that he has seen in his career, it would be hard, if not impossible, for Mr. Owen to hide symptoms of this illness for 3 to 4 minutes let alone 30-40 years. Dr. Myers further added that schizophrenia is a disease that gets worse with time. Dr. Myers testified that dementia is a deterioration of one's brain functioning and cognitive functioning and tends to cause problems with being disoriented, memory problems and trouble with speech. Mr. Owen displayed none of these signs during his time with Dr. Myers and instead was able to recite caselaw cites and specific legal rulings during the forensic interview; and demonstrated a strong memory and strong reasoning skills. In reviewing Dr. Eisenstein's report, Dr. Myers testified that doesn't hear people use the term "floating profile" and agreed with Dr. Werner that the MMPI2 results reported by Dr. Eisenstein show Mr. Owen was embellishing, exaggerating or frankly making up symptoms of mental illness. Dr. Myers repeated that Mr. Owen showed no signs of any mental illness during the Commission's forensic interview. Dr. Myers added that it is very unusual for someone to be embarrassed about a delusion if they have a genuine delusion because genuine delusions cannot be turned on and off by the person suffering from them. On cross examination, Dr. Myers testified that the Commission had no disagreements in their opinion; and repeated that Mr. Owen exhibited no deficits or signs of any mental illness. Dr. Myers further added that no signs of mental illness were observed in the DVD's of Mr. Owen's recorded interviews. Dr. Myers testified that his criminal work was 50% for the State and 50% for the defense. Dr. Myers stated that Mr. Owen meets almost every criteria for Antisocial Personality Disorder and that there is evidence of the

same all throughout his history and he has been previously described as such going back almost 40 years. Dr. Myers testified that Mr. Owen conceded the victim's bodies were dead, decomposed and buried under the ground but that he stated their souls were inside of him. Dr. Myers stated Mr. Owen's delusions only come out when he is speaking to experts about his criminal case and that the evidence indicates that there have been no referrals for delusional thinking on Mr. Owen in the last 20 years. Dr. Myers stated that it is inconceivable that someone could have schizophrenia with severe delusions, and no one would pick up on it except on a rare occasion, during an interview with an expert witness. Dr. Myers testified that gender dysphoria doesn't cause aggression or delusional thinking and that it's just a feeling that your body is not in the right gender. He added that it is very rare to see somebody who has a psychotic disorder who would not share their delusional thinking. Dr. Myers further added that when examining Mr. Owen's crimes, specifically his rapes which are of women and that he experiences orgasms and ejaculates, this demonstrates that he is oriented to women sexually. And thus the more plausible explanation for his conduct is that he is getting sadistic gratification from these violent sexual attacks. Dr. Myers testified that it is just too convenient for Mr. Owen to have this delusion come on after being convicted of murder. Dr. Myers conceded that it is plausible that Mr. Owen may have some gender dysphoria, but if so, it is mild. Dr. Myers added that typically when confronting someone with delusions, you can't reason with them. They are incapable of continuing to provide explanations and reasons as to why their delusions are true. Yet during the forensic interview Mr. Owen did just that and when confronted with inconsistencies with his delusions he was repeatedly able to provide additional explanations or information in an effort to explain his delusion to the evaluators. Dr. Myers testified to having reviewed some pro se pleadings prepared by Mr. Owen in 2021 which

consisted of several pages and the content of the pleadings did not demonstrate any indication of dementia, brain damage or problems putting thoughts together. Dr. Myers testified that Mr. Owen, at 62 years old, was still relatively young to be experiencing dementia, which generally comes on later in life. Dr. Myers further indicated that Dr. Eisenstein's IQ test of Mr. Owen argues against any signs of dementia. Specifically, he stated that it would be very challenging to test IQ under the current stress of imminent execution. And despite those difficult circumstances, Mr. Owen still scored a 92. Dr. Myers explained that IQ was a relatively still trait in humans throughout life and didn't feel there was any reason to conduct another IQ test, or even one at all based on his current presentation. Dr. Myers testified that Mr. Owen admitted to participating in a gang rape at an orphanage as a teenager by sticking his fingers inside of the victim. Dr. Myers was adamant that Mr. Owen had antisocial personality disorder and stated that without exception, serial sexual killers always have antisocial personality disorder.

In response to the defense experts' testimony, the State also presented testimony from Dr. Emily Lazarou. Dr. Lazarou is a Board Certified general and forensic psychiatrist. This was her first appointment to a Governor Commission. She has treated thousands of patients with schizophrenia during her career and clinical practice. Dr. Lazarou along with Dr. Tonia Werner and Dr. Wade Myers conducted an evaluation of Mr. Owen on May 23, 2023.

Dr. Lazarou testified that Mr. Owen did not meet a "shred" of criteria for schizophrenia and this fact was "crystal clear" in her opinion. Dr. Lazarou watched approximately 20 hours of Mr. Owens recorded interview with law enforcement from 1984 and stated that he presented as casual and confident; did not exhibit a shred of paranoia; and clearly seemed to be playing a game with law enforcement. Dr. Lazarou pointed out that Mr. Owen, in this interview, never raised

gender dysphoria and demonstrated zero feminine mannerisms or characteristics. Additionally, in Mr. Owen's initial two murder trials he never raised any issue of gender dysphoria and demonstrated no feminine mannerisms or characteristics. Dr. Lazarou testified that schizophrenics can't turn their mental illness on and off, and that they live in the delusions they are experiencing, and especially so if the delusions are of the nature and quality that is causing the individual to kill others. Dr. Lazarou stated that she confirmed with Department of Corrections personnel that in 2017 a corrections program was instituted for truly legitimate transgender inmates. The program provided many benefits to transgender inmates such as private showers for their protection and the ability to wear female under garments and grow longer hair. But to be considered for the program, an inmate would be required to submit to specific testing or counseling to confirm they were truly transgender. Dr. Lazarou stated that her review of the records indicated that Mr. Owen had never attempted to take advantage of this program over the past 6 years. Dr. Lazarou testified that she believed Mr. Owen has antisocial personality disorder and that this was not a difficult case or a close call. She stated Mr. Owen planned out every single detail of his crimes and that none of the details of his crimes are consistent with his current self-reported delusion. Dr. Lazarou added that she did not entertain Mr. Owen's story of his delusion very long because she did not find it believable at all. In fact, she stated she believed this delusion was fabricated to avoid the consequences of his actions. She stated that Mr. Owen is not psychotic and knows exactly what is going on. Dr. Lazarou took issue with Dr. Eisenstein's report of "insidious dementia" stating that there was no evidence to support or indicate this. Dr. Lazarou concluded her direct examination by stating that Mr. Owen has both a factual and rational understanding of the death penalty and why the death penalty is being imposed on him. On cross examination, Dr. Lazarou

testified that 70% of her work is for the State and 30% is for the Defense. She stated she did not believe there was any need to test for malingering with Mr. Owen because it was obvious that he was. Dr. Lazarou added to her opinion on the defendant's malingering by pointing out that there were many inconsistencies in what Mr. Owen was reporting versus what was present in the collateral data. Dr. Lazarou reaffirmed that she believed Mr. Owen is lying about his delusion and that he exhibits no indicators of dementia. Dr. Lazarou pointed out that Mr. Owen talks of his victims souls living inside him but then reports that he is agnostic. Dr. Lazarou reasserted that Mr. Owen has no disorder that affects his thought process. Further, if he had a persistent untreated mental illness for approximately 40 years, you would observe evidence of it every day. On redirect, Dr. Lazarou testified concerning Mr. Owen's statements to a psychiatrist who conducted a clinical interview of him in November of 1984. In that evaluation Mr. Owen was asked why he committed the murders. His response included that he liked danger and enjoyed overcoming adversity. However, there was no mention of his current self-reported delusion. This current delusion never surfaced until after Mr. Owen was convicted of his crimes, sentenced and then granted a retrial in 1999.

The Commission members also met with five Department of Corrections employees/prison guards who have had frequent interactions with Mr. Owen concerning his recent functioning and remote functioning. They all have had recent and regular contact with Mr. Owen and none of them had ever observed any verbalizations or behaviors consistent with gender identity issues or other psychological problems. These employees stated that Mr. Owen conversed normally with them; was coherent; presented no difficulties; and, showed no outward signs of abnormality. They noted that Mr. Owen spent a lot of time reading and writing.

After further review of the records, the Commission members conferred and there were no differences of opinion amongst them. They found Mr. Owen competent and sane to be executed. This Court finds the Commission's testimony to be extraordinarily credible.

John Manning, a Sergeant at Union Correctional Institution, testified that he has had numerous encounters with Mr. Owen over the past several years. He has observed Mr. Owen engaged in a lot of reading and writing. And he has had numerous conversations with Mr. Owen and found him to be highly intelligent and not suffering from any cognitive decline. Mr. Owen has never been observed by Mr. Manning to display feminine characteristics and has never spoken about feeling like a woman or wanting to be a woman. Finally, Mr. Manning stated that once the death warrant was signed and Mr. Owen was being moved from Union Correctional to Florida State Prison, that Mr. Owen seemed to know and understand what was going on and took a moment to speak to some of the others on the wing as he was leaving.

Jeffrey McClellan, the Assistant Warden at Florida State Prison since 2014, and a Department of Corrections employee for 29 years testified that Mr. Owen was received into Florida State Prison on May 9, 2023. Mr. McClellan stated that when Mr. Owen was processed in to be placed on Death Watch, he specifically identified himself as heterosexual.

Daniel Philbert, a Department of Corrections employee for 15 years testified that he has had multiple occasions to observe and interact with Mr. Owen. He stated Mr. Owen has always behaved appropriately. He did not observe nor did Mr. Owen ever volunteer any thing related to his gender identity issues to Mr. Philbert.

Danny Halsey, the Death Watch Sergeant for Mr. Owen since the defendant's arrival at Florida State Prison on May 9, 2023, testified. Mr. Halsey stated that he is required to do 30-

minute checks on Mr. Owen and has been working 16 hour days on Death Watch. Mr. Halsey added that he has not seen any personality or behavioral changes in Mr. Owen; that Mr. Owen has never expressed confusion about or objection to why he is on death row and about to be executed; and that Mr. Owen's mental capabilities are just as good, if not better, than anyone else's. He further testified that Mr. Owen reads and writes a lot and specifically told Mr. Halsey that he has a girlfriend in Ireland.

The defense recalled Dr. Eisenstein in rebuttal. Dr. Eisenstein clarified that 7 of the hours spent with Mr. Owen was for testing and the other 6 ¼ hours was spent on interviewing him. He testified that psychological testing is not really part of the domain of psychiatrists. He re-affirmed his opinion that Mr. Owen suffers from dementia. Dr. Eisenstein testified that an individual that could understand legalese and write briefs with cogent arguments like Mr. Owen did just a few years ago gives us a sense of his baseline functioning. Specifically, those writings require a high level of intellect and mental ability in order to produce those types of documents and indicates that Mr. Owen was probably in the bright, high range at that time. Dr. Eisenstein believes that Mr. Owen has experienced a significant drop from that level at this current time. Dr. Eisenstein testified that not all schizophrenics need help bathing, grooming or getting dressed. Additionally, Dr. Eisenstein added that after hearing the testimony of all of the other expert witnesses, nothing has changed with respect to his opinion about Mr. Owen being incompetent to be executed. Dr. Eisenstein stated that without evidence of conduct disorder before the age of 15, a person cannot be diagnosed with antisocial personality disorder. Dr. Eisenstein stated there was no evidence of conduct disorder prior to age 15 with Mr. Owen and thus he disagreed with the diagnosis of antisocial personality disorder. On cross examination, Dr. Eisenstein stated he is being paid \$350

per hour for his work and testimony in this case. He also conceded that schizophrenia is a very serious medical condition that requires medication most of the time. The court continues to find Dr. Eisenstein's testimony to be less credible than the other expert testimony and other evidence in the case.

Eric Pinkard, one of Mr. Owen's previous/current counsel, testified that he attended the Commission's competency evaluation on May 23, 2023, at the Florida State Prison. Mr. Pinkard has been an attorney at CCRC since 1997 and started working on Mr. Owen's cases in approximately 1999. He testified that he has known Mr. Owen for over 20 years. Mr. Pinkard visited the defendant the day after the death warrant was signed. He observed Mr. Owen to not be the same as he had known and observed in the past in terms of his cognitive ability. Mr. Owen didn't want to talk about legal claims or anything related to his case. Instead, he was upset that the execution would prevent him from completing his transition from a man to a woman. He expressed fear of leaving this Earth in the wrong body. He also expressed concern that two victims/women inside of him would also be killed with his execution. According to Mr. Pinkard, Mr. Owen's demeanor was groggy and he appeared to have little energy. Mr. Pinkard noted that when Mr. Owen was asked about his impending execution and whether he understands why the State is going to execute him, he responded by stating he didn't understand because he didn't kill anyone and continued to repeat the same delusion that has been discussed. Mr. Pinkard testified that Mr. Owen was not reluctant to discuss his delusion. Mr. Pinkard was not aware of when this delusion made its first appearance in Mr. Owen's history; didn't know what Mr. Owen did or did not reveal to mental health evaluators in the 1980's; and was only aware of how Mr. Owen has presented this delusion since he first became involved in his cases in the 1990's. Mr. Pinkard

testified that, in his perception, the Commission's evaluation became confrontational for approximately 25% of their interview, some of the evaluators consistently confronted Mr. Owen with their disbelief in the veracity of his delusion and confronted him with the specific facts of the crimes he was convicted of.

CONCLUSIONS

This Court, after hearing and evaluating the witnesses' testimony, as well as evaluating the evidence introduced at the hearing and other documents provided by counsel, finds that Mr. Owen has not met his burden of proving by clear and convincing evidence that he is presently insane or incompetent to be executed. This Court finds that even if the standard of proof were preponderance of the evidence, Mr. Owen has also not met that lower burden.

This Court finds the testimony and opinions of Dr. Werner, Dr. Myers and Dr. Lazarou both credible and compelling as it relates to Mr. Owen's current mental condition. Importantly, in the past, Mr. Owen has not been prescribed psychotropic medication to treat schizophrenia or any other alleged mental illness. It is inconceivable that he would not have been prescribed any medication in a clinical setting if he was truly a diagnosed schizophrenic with severe delusions. It is also inconceivable and completely unbelievable that he could truly be a diagnosed schizophrenic with severe delusions, go untreated for nearly 40 years, and experience no worsening of his condition.

This Court also finds the testimony and opinions of Dr. Werner, Dr. Myers and Dr. Lazarou to be credible as to the limited question of Mr. Owen's competency to be executed. Dr. Werner, Dr. Myers and Dr. Lazarou did not complete an exhaustive interview of Mr. Owen at Florida State Prison because that was not their mandate. Their mandate was to determine whether there was

any evidence to support the claim that Mr. Owen is not sane. This Court finds their conclusion that he is sane to be clearly and conclusively supported by the record. There is no credible evidence that he does not understand what is taking place and why it is taking place.

The testimony of the prison employees, specifically Assistant Warden Jeffrey McClellan, John Manning, Daniel Philbert and Danny Halsey, as it pertains to the absence of any positive symptoms in Owen's behavior in the recent past and post-warrant reaction, response and subsequent daily life supports the testimony and findings of Dr. Werner, Dr. Myers and Dr. Lazarou.


This Court finds that Duane E. Owen does not have any current mental illness. This Court finds that Mr. Owen's purported delusion is demonstrably false. This Court finds that Mr. Owen has an antisocial personality disorder. This Court finds that Mr. Owen is feigning or malingering psychopathology to avoid the death penalty. Even if Mr. Owen did currently suffer from schizophrenia, there is no evidence that that mental illness interferes, in any way, with his "rational understanding" of the fact of his pending execution and the reason for it. Mr. Owen is aware that the State is executing him for the murders he committed and that he will physically die as a result of the execution. There is no credible evidence that in his current mental state Mr. Owen believes himself unable to die or that he is being executed for any reason other than the murders he was convicted of.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that:

- I. Duane E. Owen does not meet the criteria for insanity at the time of execution.
- II. Duane E. Owen does not lack the mental capacity to understand the fact of the pending execution.

- III. Duane E. Owen does not lack the mental capacity to understand the reason for the pending execution.
- IV. Duane E. Owen understands that his execution is imminent and the reason why he is to be executed.

DONE AND ORDERED in Chambers at Starke, Bradford County, FL on 4 June 2023.



JAMES M. COLAW
CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished on 4 June 2023 by e-mail to:

Celia Terenzio
Celia.Terenzio@myfloridalegal.com
capapp@myfloridalegal.com

Scott A. Browne
Scott.Browne@myfloridalegal.com

John A. Tomasino
e-file@flcourts.org & warrant@flcourts.org

Leslie Campbell
Leslie.campbell@myfloridalegal.com

Brian Kramer
kramerb@sao8.org
christmasa@sao8.org

Lisa Fusaro
fusaro@ccmr.state.fl.us

Morgan Laurienzo
laurienzo@ccmr.state.fl.us

Joshua Chaykin
chaykin@ccmr.state.fl.us

The Law Office of the Capital Collateral
Regional Counsel- Middle Region
support@ccmr.state.fl.us

Leigh Miller Adrienne Ellis
lmiller@sa15.org aellis@sa15.org

Luis Bustamante
bustamantel@sao8.org
deek@sao8.org
eservice@sao8.org

Rana Wallace
ranawallace@fcor.state.fl.us
fcorlegal@fcor.state.fl.us

Karen Cashdollar
cashdollark@circuit8.org

Robert Folsom
folsomr@circuit8.org

Philip Fowler
Fowler.philip@fdc.myflorida.com

Christina Porrello
christina.porrello@fdc.myflorida.com
courtfilings@fdc.myflorida.com

Donald Davis
Donald.Davis@fdc.myflorida.com

Mikayla Waters
mikala_waters@bradfordcountyfl.gov

Elizabeth Hicks
elizabeth_hicks@bradfordcountyfl.gov


W. Thuro, Judicial Assistant