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Nebraska man wants Supreme Court to review death sentence

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A Nebraska man who killed multiple people to honor an ancient Egyptian god has asked the Supreme Court to review his death sentence, saying that life in prison is fairer.

He blames the state for letting him out of prison six years ago without adequate mental health counseling, which he says led to him killing four people.

Nikko Jenkins has been mentally ill since the age of 8, when he first entered a psychiatric institution. He jumped from foster home to foster home, and had lived in 17 different places before he was 13. He has bipolar disorder and hears voices.

In 2003, he was convicted of armed robbery and spent more than five years of a 10-year sentence in solitary confinement, where he attempted suicide and mutilated himself.

Jenkins said he was commanded by an ancient Egyptian god. He also inflicted harm others — including prison officials — while locked up, which resulted in increased jail time.

Before being released after completing his sentence for armed robbery and subsequent infractions, Jenkins requested that he be civilly committed instead of placed back on the streets, saying he was a threat to others.

Instead, the state ignored the request, and Jenkins walked out of prison in July 2013. Within three weeks, he had killed four people, having shot three men in the head and a woman multiple times.

During his trial, Jenkins insisted on representing himself. He spoke in tongues and laughed as prosecutors recounted the killings.

His attorneys from the American Civil Liberties Union asked the court last month to decide if Jenkins' Eighth Amendment rights were violated when the fact that he was kept in prolonged solitary confinement for years wasn't considered at sentencing, saying it should have been a mitigating factor.

Jenkins' also wants the justices to decide if a jury — rather than a sentencing judge — should condemn him to death.

“The constitutional error is so blatant,” Jenkins' attorneys argued in his appeal.

Jeffrey Kirchmeier, a law professor at the City University of New York, said it's a "clear violation" of Jenkins' constitutional rights for the state court not to have considered the effects of solitary confinement during his sentencing.

"The Supreme Court has repeatedly stressed the importance of a capital defendant's ability to submit mitigating evidence," Mr. Kirchmeier said.

Josh Blackman, a professor at South Texas College of Law, said he doubts the court would side with Jenkins if it were to take up the case.

"I see this as a low chance of success," Mr. Blackman told The Washington Times.

The question of whether a jury should decide a defendant's fate instead of a sentencing judge, though, is an issue the high court has not yet squarely addressed.

The state supreme courts in Florida, Colorado, Arizona and Delaware have all ruled that the Sixth Amendment requires a jury to make the findings required for a death sentence to be imposed — including considering any mitigating factors.

Clark Neily, vice president for criminal justice at the Cato Institute, said the involvement of a jury in the trial process is an issue Justice Neil M. Gorsuch has stressed in some of his work.

"As an originalist, he has expressed repeated concerns for the extent to which the role of the jury has been marginalized in our criminal justice system," Mr. Neily said of Justice Gorsuch. "This case implicates that larger tension."