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The technical legal question the Supreme Court will address in Kahler v. Kansas [2] is whether the Eighth and Fourteenth Amendments permit a state to abolish the insanity defense. In more colloquial terms, the question is whether states may abolish a defense to criminal liability that mental illness prevented a defendant from knowing his or her actions were wrong. Five states have done so—Alaska, Idaho, Kansas, Montana, and Utah.

James Kahler was sentenced to death for fatally shooting his wife, her grandmother, and his two daughters. Kahler presented the testimony of a forensic psychiatrist who stated that Kahler was suffering from severe major depression at the time of the crime and that “his capacity to manage his own behavior had been severely degraded so that he couldn’t refrain from doing what he did.”

Kahler claims he should have been able to assert an insanity defense but wasn’t allowed to under Kansas law. Prior to 1996, Kansas had adopted the M’Naghten rule for an insanity defense. Under that rule “the defendant is to be held not criminally responsible (1) where he does not know the nature and quality of his act, or, in the alternative, (2) where he does not know right from wrong with respect to that act.” In 1996 Kansas adopted the mens rea approach which “allows evidence of mental disease or defect as it bears on the mental element of a crime but abandons lack of ability to know right from wrong as a defense.”

In a 2003 case the Kansas Supreme Court rejected Kahler’s argument that the mens rea approach “violates the Due Process Clause because it offends a principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.”

Kahler pointed to a dissent from a denial of certiorari by Justices Breyer, Ginsburg, and Sotomayor, in Delling v. Idaho [3] (2012), criticizing the mens rea approach because it allows conviction of an individual who had no capacity to know that what he or she was doing was wrong. While the Kansas Supreme Court noted the three Justices’ position, it concluded it had “no effect” on the court’s previous ruling rejecting a constitutional challenge to the mens rea approach.

In his certiorari petition Kahler notes [4] that courts in seven states recognize a constitutional right to the insanity defense: Nevada, California, Louisiana, Washington, Mississippi, Colorado, and Minnesota.
Thursday, March 21, 2019 at 11:44 AM

Source URL: https://knowledgecenter.csg.org/kc/content/scotus-decide-whether-states-may-abolish-insanity-defense

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