

IN THE CIRCUIT COURT OF MAYCOMB COUNTY, ALABAMA

STATE OF ALABAMA,

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v.

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Case No. CC-00-0000

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JOE CLIENT.

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**MOTION TO PROHIBIT THE DEATH PENALTY
BECAUSE MR. CLIENT IS INTELLECTUALLY DISABLED**

Joe Client respectfully moves this Court to prohibit the State from seeking the death penalty in this case because Mr. Client is intellectually disabled and his execution is prohibited by Alabama law and the United States Constitution. In support of this motion, Mr. Client submits the following:

1. In Atkins v. Virginia, 536 U.S. 304 (2002), the Supreme Court declared that the execution of intellectually disabled individuals is cruel and unusual punishment prohibited by the Eighth Amendment. Although intellectually disabled individuals are not exempt from criminal sanction, the Court found their culpability lessened by “diminished capacities to understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand the reactions of others.” 536 U.S. at 318. In light of this lessened culpability, the Court found the death penalty cannot be justified for an intellectually disabled individual.¹ Id. at 319.

2. “A further reason for not imposing the death penalty on a person who is intellectually disabled is to protect the integrity of the trial process.” Hall v. Florida, 134 S. Ct. 1986, 1993 (2014). The Court has explained that procedural deficiencies inherent in trying an individual with intellectual disability create a “special risk” of wrongful execution, including the increased likelihood of a false confession, inability to assist defense counsel, inability to serve as a witness, the danger the person’s demeanor creates a false impression of lacking remorse, and the strong likelihood that intellectual disability is seen by the jury not as mitigation but as an indication of future dangerousness. Atkins, 536 U.S. at 320-21.

¹The Court further explained that such impairments mean the imposition of death could not serve as a deterrent because “it [is] less likely that [intellectually disabled individuals] can process the information of the possibility of execution as a penalty and, as a result, control their conduct based upon that information.” Atkins, 536 U.S. at 320.

Citing diminished culpability and this “special risk” of wrongful execution, the Court “concluded that *death is not a suitable punishment*” for an intellectually disabled person. Id. at 321 (emphasis added); Borden v. State, 60 So. 3d 935, 939 (Ala. Crim. App. 2004) (finding death penalty unconstitutional for intellectually disabled individual).

3. In Atkins, the Court referenced the clinical definition of intellectual disability adopted by the American Psychiatric Association (“APA”) and the American Association on Intellectual and Developmental Disabilities (“AAIDD”). 536 U.S. at 308 n. 3, 309 n.5. Since Atkins, the Supreme Court has consistently affirmed reliance on the most current medical standards for assessing intellectual disability. See Moore v. Texas, 137 S. Ct. 1039, 1048 (2017) (determination of whether individual is exempt from execution under Atkins must be “informed by the medical community’s diagnostic framework” including the “leading diagnostic manuals – the DSM-5 and the AAIDD-11”).²

4. The most recent definitions in the DSM-5 and the AAIDD maintain the three criteria identified by Atkins as necessary for a finding of intellectual disability: (1) significantly subaverage general intellectual functioning (an IQ score between 50 and 75)³; (2) accompanied by significant limitations in adaptive behavior; and (3) the onset of

² While the Court in Atkins left it to the states to establish standards and procedures for determining who is intellectually disabled and therefore exempt from the death penalty, see 536 U.S. at 317, the Alabama legislature has not yet enacted such legislation, Carroll v. State, 215 So. 3d 1135, 1147 (Ala. Crim. App. 2015).

³ The Supreme Court has observed that an IQ score of 70 to 75 is typically considered within the range of scores demonstrating the significantly subaverage intellectual functioning prong of the intellectual disability definition. Atkins, 536 U.S. at 309 n.5; see also Perkins, 851 So. 2d at 456; Smith v. State, 112 So. 3d 1108, 1126 (Ala. Crim. App. 2012) (citing Morris v. State, 60 So. 3d 326, 339 (Ala. Crim. App. 2010)). Consistent with this observation, the Supreme Court has explicitly held that utilizing a strict IQ score cutoff is unconstitutional. Hall, 134 S. Ct. at 1996 (finding unconstitutional refusal to apply “standard error of measurement,” a “statistical fact” reflecting “inherent imprecision” of IQ tests); see also Carroll v. Alabama, 137 S. Ct. 2093 (2017) (granting certiorari and remanding for further consideration where evidence established defendant had IQ of 71); Lane v. Alabama, 130 S. Ct. 91 (2015) (granting certiorari and remanding where uncontested evidence established that defendant had IQ of 70). As the Court found, intellectual disability “is a condition, not a number.” Id. at 2001; see also Moore, 137 S. Ct. at 1049; DSM-5, at 37.

intellectual disability must have occurred during the developmental period. DSM-5, at 31⁴; see also Atkins, 536 U.S. at 308, n.3, 309, n.5.

5. Mr. Client is intellectually disabled and therefore is not eligible for the death penalty. First, he suffers from significantly subaverage intellectual functioning. Mr. Client failed the third grade three times, and was placed in special education classes in fifth grade. Records from Elementary School, at 3 (attached as Appendix A). At age 12, he was administered the Wechsler Intelligence Scale for Children (WISC) by a school psychologist, and determined to have a verbal IQ of 65, a performance IQ of 69, and a full scale IQ of 63. Id. at 8. Mr. Client did not attend school after the eighth grade. Id. at 12. At age 16, Mr. Client was diagnosed as mildly intellectually disabled by the Department of Youth Services. Department of Youth Services Records, at 10 (attached as Appendix B).

6. Second, Mr. Client suffers from significant or substantial deficits in adaptive behavior. Mr. Client has never learned to read or write and is unquestionably illiterate. Records from the Taylor Hardin Secure Medical Facility indicate that the “patient is unable to read or write,” and an “x” marked Mr. Client’s signature. Taylor Hardin Records, at 120 (attached as Appendix C). Reports from the Department of Human Resources indicate that his impaired intellectual functioning, combined with the abuse and neglect he suffered as a child, severely limited Mr. Client’s ability to cognitively and intellectually function in his surroundings. Department of Human Resources Records, at 8 (attached as Appendix D).

7. Finally, the onset of Mr. Client’s intellectual disability occurred before the age of 18. School records indicate that Mr. Client was placed in special education classes at the age of 11. Records from Elementary School, at 2. Additionally, medical records establish that Mr. Client was diagnosed as intellectually disabled at the age of 16, when a doctor who treated Mr. Client for a tetanus infection and encephalitis noted that Mr. Client had always had some difficulty talking, understanding what was happening during treatment, and did not appear to appreciate the nature of his injuries. Records of Dr. Doctor, at 2 (attached as Appendix E).

8. In light of these consistent findings of Mr. Client’s intellectual disability, this Court must find that Mr. Client is intellectually disabled and that pursuant to Atkins, the State of Alabama is barred from seeking the death penalty in this case.

⁴Unlike the DSM-4 cited in Atkins, which required that the onset of intellectual disability occur before the age of 18, Atkins, 536 U.S. at 308 n.3, 309 n.5, the DSM-5 no longer sets a strict cut-off for age of onset and instead requires that onset occur “during the developmental period.” DSM-5 at 31.

For these reasons, Mr. Client respectfully requests that this Court:

- a. provide Mr. Client with any discovery necessary to prove his claim;
- b. conduct an evidentiary hearing prior to trial and outside the presence of the jury at which Mr. Client may present evidence in support of this motion; and
- c. enter an order granting the motion, find that Mr. Client is intellectually disabled, and prohibit the State from seeking the death penalty in this case.

Respectfully submitted,

/s/ Linda Lawyer

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[CERTIFICATE OF SERVICE]

[MOTION UPDATED ON 10/03/17]