

**IN THE CIRCUIT COURT OF MARSHALL COUNTY, ALABAMA**

<b>STATE OF ALABAMA,</b>	)	
	)	
<b>PLAINTIFF,</b>	)	
	)	
<b>v.</b>	)	<b>CASE NO.: CC-2018-000465.00</b>
	)	
<b>JIMMY ONEAL SPENCER,</b>	)	
	)	
<b>DEFENDANT.</b>	)	

**MOTION TO PROHIBIT THE DEATH PENALTY  
BECAUSE DEFENDANT IS INTELLECTUALLY DISABLED**

**COMES NOW**, the Defendant, Jimmy Oneal Spencer, by and through his attorneys of record, and respectfully moves this Court to prohibit the State from seeking the death penalty in this case because the Defendant is intellectually disabled and his execution is prohibited by Alabama law and the United States Constitution. In support of this motion, the Defendant 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.<sup>1</sup> 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

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<sup>1</sup>The 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.

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. 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”).<sup>2</sup>

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)<sup>3</sup>;

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<sup>2</sup> 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).

<sup>3</sup> 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,

(2) accompanied by significant limitations in adaptive behavior; and (3) the onset of intellectual disability must have occurred during the developmental period. DSM-5, at 31<sup>4</sup>; see also Atkins, 536 U.S. at 308, n.3, 309, n.5.

5. The Defendant, Jimmy Oneal Spencer, is intellectually disabled and therefore is not eligible for the death penalty. First, he suffers from significantly subaverage intellectual functioning. On December 10, 2021, he was administered the Wechsler Adult Intelligence Scale - Fourth Edition (WAIS-IV) by Board Certified Clinical Neuropsychologist, H. Randall Griffith, and was determined to have an IQ score falling within the range of 53-61. The Defendant's Verbal Comprehension Index (similarities, vocabulary, information) score was at 61; Perceptual Reasoning Index (block design, matrix reasoning, visual puzzles) score was a 69; Working Memory Index (digit span, arithmetic) score was a 60; and Processing Speed Index (symbol search, digit symbol coding) score was a 56. (See "Forensic Psychological Evaluation" attached hereto).

6. Second, the Defendant suffers from significant or substantial deficits in adaptive behavior. The Defendant has never learned to read or write and is unquestionably illiterate. The Defendant did not attend school after the eighth grade, and while in grade school, he attended special education classes. The Defendant's intellectual test result fell in the extremely low range. *Id.*

7. Finally, the onset of Mr. Spencer's intellectual disability occurred before the age of 18. The Defendant failed multiple grades in grade school and was placed in special education classes. The Defendant has an eighth grade education and never attended school after that time. The Defendant failed to learn to read and write while in school and is illiterate. The Defendant struggled intellectually while in school and quit after eighth grade.

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

**WHEREFORE**, the Defendant respectfully requests that this Court:

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intellectual disability "is a condition, not a number." Id. at 2001; see also Moore, 137 S. Ct. at 1049; DSM-5, at 37.

<sup>4</sup>Unlike 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.

- a. Provide the Defendant 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 the Defendant may present evidence in support of this motion; and
- c. Enter an Order granting the motion, find that the Defendant is intellectually disabled, and prohibit the State from seeking the death penalty in this case.

Respectfully submitted,

*/s/Robert B. Tuten*

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing motion has been served upon all counsel of record via Alafire this 2<sup>nd</sup> day of September, 2022.

*/s/Robert B. Tuten*

Robert B. Tuten

*/s/Jerry Wayne Baker, Jr.*

Jerry Wayne Baker, Jr.