# SUPREME COURT OF THE UNITED STATES

DANNY LEE HILL *v.* TIM SHOOP, WARDEN

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 21–6428. Decided June 30, 2022

The petition for a writ of certiorari is denied.

JUSTICE SOTOMAYOR, with whom JUSTICE BREYER and JUSTICE KAGAN join, dissenting from the denial of certiorari.

Petitioner Danny Hill was convicted of murder and sentenced to death before this Court's decision in *Atkins* v. *Virginia*, 536 U. S. 304 (2002), which held that it is unconstitutional to execute people with intellectual disabilities. In response to *Atkins*, Hill filed a petition for state postconviction relief. Despite a mountain of record evidence to the contrary, the state courts held that Hill was not intellectually disabled. On federal habeas review under the Antiterrorism and Effective Death Penalty Act (AEDPA), a unanimous panel of the Sixth Circuit concluded that the state courts unreasonably determined the facts, and ordered relief as to Hill's death sentence. Specifically, the Sixth Circuit ruled that the state courts "failed seriously to contend with the extensive past evidence of Hill's intellectual disability" by "exclud[ing] or discount[ing] past evidence of intellectual disability" and engaged in "cafeteria-style selection of some evidence" over other evidence. *Hill* v. *Anderson*, 960 F. 3d 260, 270 (2020) (*per curiam*). The Sixth Circuit took the case en banc, vacated the panel decision, and in a deeply divided decision, affirmed the District Court's denial of habeas relief.

As the seven dissenting judges observed, "[n]o person looking at this record could reasonably deny that Hill is intellectually disabled under *Atkins*." 11 F. 4th 373, 400 (CA6

2021) (opinion of Moore, J.). Before Hill filed his state petition for postconviction relief, he had been diagnosed with intellectual disabilities approximately 10 times, beginning at age six. He scored 70 or below on every IQ test he took during his school years. The record before the state courts also revealed significant limitations in Hill's functional academics, self-care, social skills, and self-direction. He could not sign his own name, never lived independently, was "'functionally illiterate'" at school and in prison, could not read or write above a third-grade level, and could not perform a job without substantial guidance from supervisors. *Id.*, at 407. He has never been able to take care of his own hygiene independently; even in the rigidly organized environment of prison, he will not shower without reminders. All three medical professionals who testified at the mitigation phase of Hill's trial concluded that he was within the range of intellectual disability, see *State* v. *Hill*, 177 Ohio App. 3d 171, 177, 2008-Ohio-3509, ¶¶ 8–11, 894 N. E. 2d 108, 112, and the trial court found the record indicated that Hill was "'mildly to moderately retarded.'" 11 F. 4th, at 381 (majority opinion).

For the reasons urged by Judge Moore in her dissent below, I would summarily reverse the en banc court's denial of habeas relief. There is overwhelming record support for the fact that Hill has intellectual disabilities, as the state courts recognized at his trial and on direct appeal. It was only by discounting extensive past evidence of intellectual disability and focusing myopically on Hill's highly structured interactions with law enforcement, prison officials, and the courts that the state postconviction courts came to a different conclusion. At a minimum, future courts and, if the time comes, the Ohio Parole Board, should remember that a federal court's conclusion that a state court's decision was not "unreasonable" under AEDPA does not mean it was correct. As the en banc Sixth Circuit itself acknowledged, there is no question that jurists "could have reasonably

reached the opposite conclusion" as the Ohio courts with respect to Hill's intellectual disability, and therefore whether he is constitutionally eligible for the death penalty. *Id.*, at 395.