CAPITAL CASE

No.

IN THE SUPREME COURT OF THE UNITED STATES

TYRONE CHALMERS

Petitioner

vs.

STATE OF TENNESSEE

Respondent

PETITION FOR WRIT OF CERTIORARI

TO THE TENNESSEE SUPREME COURT

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CAPITAL CASE

QUESTIONS PRESENTED

Where a petitioner establishes uncontested proof that despite effort he repeated the first grade and was enrolled in special education in the second grade; that his reading has never advanced beyond a fourth grade level; that he cannot tell time using an analog clock; that he cannot understand or work with money; that he has never been able to navigate beyond a one-mile radius of his childhood home; that his IQ score is between 67 and 75; that his disabilities existed prior to his eighteenth birthday; and where this Court declared in *Moore v. Texas*, "States may not execute anyone in 'the *entire category* of [intellectually disabled] offenders'" may a state thwart the Constitutional prohibition against execution of the intellectually disabled by failing to provide a procedural vehicle for the adjudication of an *Atkins*-exemption claim? *Moore v. Texas*, 137 S.Ct. 1039, 1051 (2017) (emphasis in original) (quoting *Roper v. Simmons*, 543 U.S. 551, 563-63 (2005)).

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PETITION FOR WRIT OF CERTIORARI

Tyrone Chalmers respectfully petitions for a writ of certiorari to review the judgment of the Tennessee Supreme Court.

OPINIONS BELOW

The opinion of the Court of Criminal Appeals below is unreported. W2018-01650-CCA-R28-PD; App. 1-4. The Tennessee Supreme Court denied permission to appeal. W2018-01650-SC-R11-PD; App. 5.

RELATED PROCEEDINGS

Judgment in criminal case affirmed by *State v. Chalmers*, 1999 WL 135093 (Tenn. Crim. App. March 15, 1999), and *State v. Chalmers*, 28 S.W.3d 913 (Tenn.

2000). This Court denied a petition for writ of certiorari. *Chalmers v. Tennessee*, 532 U.S. 925 (2001). Denial of post-conviction affirmed by *Chalmers v. State*, 2008 WL 2521224 (Tenn. Crim. App. June 25, 2008). Habeas proceedings filed under *Chalmers v. Mays*, 2:09-cv-02051 (W.D. Tenn.) are stayed pending the resolution of Mr. Chalmers' state claims.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. §1257. The Tennessee Supreme Court denied permission to appeal on May 17, 2019. The mandate of the Tennessee Supreme Court issued on May 28, 2019. On August 18, 2019 the Circuit Justice granted Mr. Chalmers an extension of time until September 16, 2019 to file this petition. This petition is timely filed.

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the Eighth and Fourteenth Amendments to the United States Constitution:

The Eighth Amendment provides in pertinent part: "[N]or [shall] cruel and unusual punishments [be] inflicted."

The Fourteenth Amendment provides in pertinent part: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

I.

Tennessee courts sentenced Tyrone Chalmers to death before this Court held that it is unconstitutional to execute an intellectually disabled capital defendant; though *Atkins* pre-dated the post-conviction review of Mr. Chalmers' conviction, post-conviction counsel failed to present Mr. Chalmers' manifest disability to the post-conviction court.

In 1997, Tyrone Chalmers was convicted of murder in the first degree and sentenced to death in the Criminal Court of Shelby County, Tennessee. It wasn't until 2002, in *Atkins v. Virginia*, 536 U.S. 304 (2002), that this Court recognized that the execution of the intellectually disabled violates the Eighth Amendment. After his conviction and death sentence were affirmed on direct appeal, Mr. Chalmers sought post-conviction relief. Unfortunately for Mr. Chalmers, his post-conviction counsel failed to investigate, develop, or present proof in support of an *Atkins* claim, despite his reported IQ tests that included a 73 on a Wechsler Intelligence Scale for Children-Revised ("WISC-R") that was administered in 1985 as part of his special education in Memphis City Schools; a 75 on a WAIS-IV; and a 66 on a Stanford-Binet V. The Tennessee courts denied Mr. Chalmers' post-conviction litigation in 2008 – without ever considering or adjudicating his meritorious claim of exemption from execution.

II.

Uncontested proof establishes that Tyrone Chalmers is intellectually disabled and exempt from execution under the Eighth Amendment.

Mr. Chalmers has a meritorious claim that he is ineligible for execution. He has been diagnosed with intellectual disability under the criteria of the leading professional association, the American Association on Intellectual and

Developmental Disabilities (AAIDD), the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM-5), and the standards enumerated by this Court in *Moore v. Texas,* 137 S.Ct. 1039 (2017). As Daniel Reschly, Ph.D. has sworn, Mr. Chalmers meets all three of the intellectual disability criteria: (1) Mr. Chalmers displays significantly subaverage intellectual functioning as evidenced by an obtained IQ score of 66.4 on the Stanford-Binet Fifth Edition;[1] (2) Mr. Chalmers manifests significant deficits in all three domains of adaptive functioning—Conceptual, Social, and Practical—delineated by the AAIDD, 2002 and 2010 editions. He repeated the first grade, and was enrolled in special education in the second grade. His reading has never advanced beyond a fourth grade level. He cannot tell time, and cannot understand or work with money. He has never been able to independently navigate beyond a one-mile radius from his childhood home; and (3) Mr. Chalmers exhibited these limitations during the developmental period (i.e., before the age of eighteen). The proof of Mr. Chalmers' intellectual disability is unrefuted. Exactly as in *Moore*, Tyrone Chalmers has an IQ test score of 75 or below accompanied by deficits in adaptive behavior. Thus, the Eighth Amendment demands that a reviewing court consider all of his evidence of intellectual disability to determine whether, under governing medical standards, he is intellectually disabled, and thus, exempt from execution. *See Moore*, 137 S.Ct. 1039 (2017)

[1] Mr. Chalmers raw score on this test was a 69. This score was to be adjusted for the obsolescence of the original test norms. Mr. Chalmers also had a raw score of 76 on the WAIS-IV, which, when corrected for norm obsolescence, is actually 75. His raw score on the WISC-R was 77, which is a 72.7 when corrected for norm obsolescence.

(inquiry into intellectual disability had to continue given Moore's IQ test score of 74).

III.

The state courts have repeatedly denied Mr. Chalmers a forum for adjudication of his claim.

Mr. Chalmers has persistently sought relief in the state courts, presenting his exemption from execution pursuant to every procedural vehicle available under Tennessee law. In 2012 with the foregoing in hand, Mr. Chalmers moved the state court to reopen his post-conviction proceedings pursuant to Tennessee Code Annotated §40-30-117. He later amended his motion to include a writ of error *coram nobis* and invoking relief under the Tennessee Code Annotated §39-13-203 which specifies that intellectually disabled defendants convicted of murder shall be sentenced to life without the possibility of parole. Without in any way denying that Mr. Chalmers is intellectually disabled, the trial court concluded that the grounds for relief were precluded by *Keen v. State*, 398 S.W.3d 594 (Tenn. 2012) and that they were untimely. Mr. Chalmers appealed.

During the pendency of Mr. Chalmers's state appeal, this Court decided *Hall v. Florida*, 572 U.S. 701 (2014), holding that, under the Eighth Amendment, a court reviewing a claim of intellectual disability must, *inter alia*: (a) consider the standard error of measurement of I.Q. test scores; (b) consider evidence of adaptive deficits once a movant proffers an I.Q. test score of 75 or below, (c) consider and apply relevant clinical standards, such as those of the American Association Of Intellectual And Developmental Disabilities (AAIDD), and (d) view intellectual

functioning (as expressed by I.Q. scores) and adaptive deficits as part of a holistic assessment of intellectual disability. *Hall*, 572 U.S. at 724.

On appeal, Mr. Chalmers maintained that he should be heard, because his death sentence violated the Eighth Amendment under *Hall v. Florida* and that he was entitled to a hearing. The Tennessee Court of Criminal Appeals denied relief. Mr. Chalmers sought review in the Tennessee Supreme Court. In his application for permission to appeal, he asked the Tennessee Supreme Court to decide whether he was entitled to a hearing on his intellectual disability claim where he presented *prima facie* evidence of intellectual disability, but never had an opportunity to have that claim adjudicated in light of the scientifically reliable and constitutionally mandated standards contained in *Hall v. Florida*, 572 U.S.701 (2014). The Tennessee Supreme Court denied relief in a similar case, *Payne v. State,* 493 S.W.3d 478 (Tenn. 2016), and then declined to hear Mr. Chalmers's appeal.

Following this Court's decision in *Moore v. Texas*, Mr. Chalmers again filed for relief. He filed a motion to reopen state post-conviction proceedings on March 29, 2018, notifying the state court of this Court's clarification of the standards that should be used in an *Atkins* determination and requesting a hearing and relief. The post-conviction court denied the motion to reopen. On April 10, 2018 the Tennessee Court of Criminal Appeals denied permission to appeal on the basis that *Moore* is not a new rule of law that must be retroactively applied. The Tennessee Supreme Court denied review on May 15, 2019.

REASON THE WRIT SHOULD BE GRANTED

The Eighth Amendment requires state courts to provide a remedy for persons who are exempt from the death penalty due to intellectual disability.

In *Moore v. Texas*, 137 S.Ct. 1039 (2017), this Court held that under the Eighth Amendment, state courts must evaluate an intellectual disability claim using the "medical community's current standards" for identifying those who are intellectually disabled. *Moore*, 137 S.Ct. at 1053. All aspects of an intellectual disability determination must comport with those current clinical standards – which include criteria and standards established by the APA in the Diagnostic and Statistics Manual of Mental Disorders, 5th Edition (DSM-5), and AAIDD's User's Guide to Intellectual Disability, Eleventh Edition (AAIDD-11). *Id.* at 1050.

Adhering to the rule of *Montgomery v. Louisiana,* 136 S.Ct. 718 (2016) that states may not fail to provide a forum for vindication of a constitutional protection, *Moore* holds that states may not fail to provide an appropriate forum for the adjudication of intellectual disability claims. *Moore* adds to *Montgomery* that the Eighth Amendment requires application of the current clinical, scientific standards to the determination of exemption from execution under *Atkins*. Just as Mr. Moore was entitled to have evidence of his intellectual disability assessed in accordance with the current clinical standards set forth in DSM-5 and AAIDD-11, *Moore v. Texas* mandates that Mr. Chalmers receive that same review of his intellectual disability claim.

In the years following this Court's decision in *Atkins*, Tennessee courts have failed to grant sentencing phase relief to a single post-conviction defendant based on

a claim of intellectual disability. Although the state courts have repeatedly stated that the state of Tennessee has no interest in executing the intellectually disabled, they refuse to identify a procedural vehicle for inmates such as Mr. Chalmers. *See Keen v. State*, 398 S.W.3d 594, 613 (Tenn. 2012) ("We remain committed to the principle that Tennessee has no business executing persons who are intellectually disabled."); *Payne v. State*, 493 S.W.3d 478 (Tenn. 2016) (same).

Mr. Chalmers is ineligible for execution because he is intellectually disabled. Not only is his IQ more than two standard deviations below the norm, he is unable to count money, read a watch, or find his way home. The evidence in record indicates that Mr. Chalmers fits within the:

> generally accepted, uncontroversial intellectual-disability diagnostic definition, which identifies three core elements: (1) intellectual-functioning deficits (indicated by an IQ score "approximately two standard deviations below the mean"—i.e., a score of roughly 70—adjusted for "the standard error of measurement," AAIDD–11, at 27); (2) adaptive deficits ("the inability to learn basic skills and adjust behavior to changing circumstances," *Hall v. Florida*, 572 U.S. ——, ——, 134 S.Ct. 1986, 1994, 188 L.Ed.2d 1007 (2014)); and (3) the onset of these deficits while still a minor. See App. to Pet. for Cert. 150a (citing AAIDD–11, at 1). See also *Hall*, 572 U.S., at ——, 134 S.Ct., at 1993–1994

Moore, 137 S.Ct. at 1045. Tennessee should not be permitted to execute him. "States may not execute anyone in "the entire category of [intellectually disabled] offenders," *Roper*, 543 U.S., at 563–564, 125 S.Ct. 1183 (emphasis added)." *Id.* at 1051.

Where there is a constitutional right there must be a remedy. Such is a bedrock principle of our judicial system. *Marbury v. Madison*, 1 Cranch 137, 162

(1803) ("The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws whenever he receives an injury."). When there is a constitutional limitation on the state's power to act, the courts are constitutionally obligated to provide a substantive opportunity to determine whether that limitation applies. *Montgomery v. Louisiana*, 136 S.Ct. 718 (2016). *Moore* places a constitutional obligation on the State of Tennessee to provide a forum for the adjudication of Mr. Chalmers's intellectual disability exemption claim.

Moore and *Montgomery* as well as the bedrock protections of constitutional due process, require that the procedural barricades be removed, and that Mr. Chalmers be given a merits hearing on his claim of intellectual disability.

CONCLUSION

The writ should be granted.

Respectfully Submitted,

/s/ Amy D. Harwell
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CERTIFICATE OF SERVICE

I certify that a copy of this application was served upon counsel for Respondent, Andrew Coulam, 425 Fifth Avenue North, Nashville, Tennessee 37243 this the 16th day of September, 2019.

/s/ Amy D. Harwell
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Counsel for Tyrone Chalmers