IN THE UNITED STATES SUPREME COURT

RONALD JOHNSON,	)	
	)	
Petitioner,	)	
	)	
vs.	)	NO. 19-7153
	)	
STATE OF MISSOURI,	)	
	)	
Respondent.	)	

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

REPLY TO BRIEF IN OPPOSITION

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REPLY ARGUMENT

THIS CLAIM IS PROPERLY BEFORE THE COURT, AND RONALD JOHNSON'S PLEA WAS NOT KNOWING, VOLUNTARY OR INTELLIGENT.

Ronald Johnson pleaded in his amended post-conviction motion that he was coerced into pleading guilty, because his plea was based on misinformation, in that he was not, and would never be, eligible for the death penalty. The Missouri Supreme Court ruled on this claim on the merits, finding Ronald was presumed eligible for the death penalty, even though he had an IQ between 53 and 64, and even though every expert witness in the case, including the state's expert, found him to be intellectual disabled. This claim has been raised at every stage in the proceedings, from the initial PCR pleading, through the State appellate process, to the case at bar. It is before this court without procedural bar, after being repeatedly addressed on the merits. The Argument by the State that it is not properly before this Court is without merit.

The lower courts and Missouri Supreme Court ruled on the merits of this claim. *Johnson v State*, 580 S.W.3d 895 (Mo. banc 2019). The Missouri Supreme Court explicitly addressing the arguments, and finding that it is not coercive to tell a man, with a 53 IQ, and a diagnosis of intellectual disability from the age of 10, that if he did not plead guilty to life without parole, that he would be subject to the death penalty. [Appendix at a7-10]. The Missouri Supreme Court did so in detail, noting its finding that in Missouri one had to go to trial and prove intellectual

disability to be ineligible for the death penalty. [Appendix at a7-10]. Until adjudication at trial, no matter how severe and uncontested the mental disability is, that individual will be presumed not to be intellectually disabled. [Appendix at a10-13].

It is true the majority of the Missouri Supreme Court ruled that this claim should have been raised as a failure to investigate claim.[1] [Appendix at a13]. However, even if a failure to investigate claim existed, this does not negate existence of other meritorious claims, such as the ones raised at bar. It does not negate the coercive nature of incorrectly telling an intellectually disabled man he risked death. It does negate that this advice was not the well-founded advice of competent counsel, but a strong-armed tactic used to force a plea from a vulnerable disabled man. And it does not negate that this tactic **worked,** and caused a young man with a life long history of intellectual disability, who was on the record as functioning in the bottom 1% of the human population intellectually, to plead guilty to life without parole. [See Petition at 15 for details of Mr. Johnson's

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1 The majority in the Missouri Supreme Court also ruled that a failure to investigate claim was in the amended motion (where all claims must be raised by Missouri law), and had been abandoned on appeal. [Appendix at 13 fn 8]. However, the amended motion for post-conviction relief contained three claims: a coerced guilty plea (claim 8a); failure to challenge the mental examination's finding of competency to stand trial (claim 8b); and that Mr. Johnson was and would always be incompetent (claim 8c). [PCR Lf 95-96]. There were no other claims. [PCR Lf 95-97]. Curiously that state in its Brief in Opposition argues both that Mr. Johnson timely raised, and then abandoned this claim, and that he also failed to timely raise it, then attempted to "shoehorn it in" on appeal. [BIO at 12 versus 13].

intellectual functioning]

The dissenting three judges of the Missouri Supreme Court noted that this claim was properly raised and preserved. [Appendix at a20]. The dissent correctly noted that Ronald's argument had been raised at every stage. [Appendix at a20]. The fact that a failure to investigate claim was discovered during the litigation of this case does not change the fact that, as pleaded since the initial motion for post conviction relief, Ronald Johnson did not make a knowing, voluntary and intelligent plea, and acted under coercion, because his attorney threatened him with the possibility of the death penalty, when Ronald was categorically ineligible to be executed. *See Atkins v. Virginia*, 536 U.S. 304 (2002)

This argument has been preserved at all stages, and presents a controversy ready for adjudication by this court. Further, even if one presumes there was a pleading deficiency in this case, the error is so egregious, and such a manifest injustice, that allowing this opinion to stand, risks both lasting harm to a disabled young man and undermining this Court's entire *Atkins* line of cases.

THERE WAS EXTENSIVE EVIDENCE OF RONALD'S INTELLECTUAL DISABILITY IN THE RECORD:

The State argues that there has been no finding that Ronald is intellectually disabled. This ignores that every mental health record and expert admitted during the course of the evidence-- including the state mental examination explicitly

credited by the Court-- stated that Ronald had an intellectual disability, and an IQ between 53 and 64. The Petition for Certiorari from page 13 to 15 details these repeated findings. The State's arguments are refuted, repeatedly, by the record. Ronald has an intellectual disability. He has been diagnosed since he was 10 years old. No one, save the Missouri Supreme Court's majority, has found otherwise.

RONALD HAS TIMELY RAISED HIS CLAIMS:

The State faults Mr. Johnson for the timing of his objection to the constitutionality of the Missouri Supreme Court's ruling regarding when a finding of intellectual disability must be made. [BIO at 21]. The State fails to note that this opinion is the sole ruling on this point on this matter in Missouri, and split the seven-judge Missouri Supreme Court nearly in half, four to three. [*See* Appendix *passim*].

Counsel cannot assert a claim which did not exist. Neither Ronald nor his counsel had any way to know that, in the first case to rule directly on the matter, the Missouri Supreme Court would create an unconstitutional methodology for determining death eligibility in the context of guilty pleas. The lack of precedent on the timing issue was even a focus of oral argument, where the lack of precedent and guidance was raised repeatedly by the judges of the Missouri Supreme Court themselves. [Oral argument in SC9730, January 16, 2019].

Ronald has asserted his claims under *Atkins* since his post-conviction motion was filed. [PCR Lf 95-96]. He has consistently asserted, and repeatedly proven that he has an intellectual disability. Asserting that he also should also have predicted that the Supreme Court of Missouri would later err in setting a standard for when he had to prove his disability applies an artificial bar to review.

THE STATE IGNORES THE NATURE OF THE CIRCUIT SPLIT

The State asserts there is no circuit split with the Tenth Circuit, based on factual differences in the cases [BIO at 18-20]. The State willfully ignores what actually causes the circuit split-- the standards for determining intellectual disability, and the timing of when it had to occur.

Until this Court steps in there will remain a split between Missouri and the Tenth Circuit, which will only continue to deepen. The Tenth Circuit explicitly found that it was ineffective of an attorney not to litigate if their client had an intellectual disability before trial. *Harris v. Sharp*, 941 F.3d 962 (2019). Missouri has ruled exactly opposite to this standard. *Johnson v State*, 580 S.W.3d 895 (Mo. banc 2019). This is the definition of a circuit split.

CONCLUSION

There are few cases presented with as overwhelming evidence of mental disability as the case at bar. The Supreme Court of Missouri's opinion conflicts

with federal circuit case law and flouts this Court's opinion in *Atkins* by allowing incompetent counsel to use the threat of the death penalty to induce a plea of guilty for an intellectually-disabled client. This Court should grant Mr. Johnson's petition.

Respectfully submitted,

/s/ Amy M. Bartholow

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CERTIFICATE OF SERVICE

I hereby certify that I am a member in good standing of the bar of this Court and that two true and correct copies of Petitioner's "Reply to Brief in Opposition," in the case of *Johnson v. Missouri*, No. 19-7153 were forwarded pursuant to Supreme Court Rule 29.5, postage prepaid, this 19th day of May, 2020, to:

D. John Sauer
Solicitor General
P.O. Box 899
Jefferson City, MO

Ten copies of Petitioner's "Reply to Brief in Opposition" thereto were forwarded to:

William Suter, Clerk
United States Supreme Court
One First Street N.E.
Washington, DC 20543

Pursuant to Supreme Court Rule 39 this 19th day of May, 2020.

/s/ Amy M. Bartholow

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