No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2019

TAURUS CARROLL, Petitioner,

v.

STATE OF ALABAMA, Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE ALABAMA SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI

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CAPITAL CASE

QUESTION PRESENTED

Taurus Carroll is intellectually disabled and therefore ineligible for execution pursuant to Atkins v. Virginia, 536 U.S. 304 (2002). At his Atkins hearing in 2012, the trial court disregarded undisputed evidence that he has an IQ of 71 and subaverage intellectual functioning, and used evidence that failed to adhere to current medical standards to discount clinically-valid evidence of significant adaptive deficits. The Alabama appellate courts accepted the evidence that did not adhere to current medical standards, deferred to the trial court, and affirmed Mr. Carroll's death sentence. Subsequently, this Court granted certiorari and remanded Mr. Carroll's case to the Alabama appellate courts to reevaluate the evidence in light of Moore v. Texas, 137 S. Ct. 1039 (2017).

Despite this Court's clear directive, on remand, the Alabama appellate courts again deferred to the trial court's findings, which ignored current medical standards and were made prior to this Court's decisions in Moore, Brumfield v. Cain, 135 S. Ct. 2269 (2015), and Hall v. Florida, 572 U.S. 701 (2014), raising the following question:

> Does the Alabama Supreme Court's continued reliance upon evidence that fails to adhere to current medical standards in rejecting Mr. Carroll's claim of intellectual disability violate the Eighth Amendment as set forth in Moore, Brumfield, Hall, and Atkins?

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PETITION FOR WRIT OF CERTIORARI

Taurus Carroll respectfully petitions for a writ of certiorari to review the judgment of the Alabama Supreme Court.

OPINIONS BELOW

The opinion of the Alabama Court of Criminal Appeals affirming Mr. Carroll's sentence, Carroll v. State, No. CR-12-0599, 2017 WL 6398236 (Ala. Crim. App. Dec. 15, 2017), and that court's order denying Mr. Carroll's application for rehearing on March 9, 2018, are attached at Appendix A. The opinion of the Alabama Supreme Court affirming Mr. Carroll's sentence, Ex parte Carroll, No. 1170575, 2019 WL 1499322 (Ala. Apr. 5, 2019), and that court's order denying Mr. Carroll's application for rehearing on September 20, 2019, are attached at Appendix B.

JURISDICTION

On December 15, 2017, the Alabama Court of Criminal Appeals affirmed Mr. Carroll's death sentence. Carroll v. State, No. CR-12-0599, 2017 WL 6398236 (Ala. Crim. App. Dec. 15, 2017). On March 9, 2018, the Court of Criminal Appeals denied rehearing. On April 5, 2019, the Alabama Supreme Court affirmed Mr. Carroll's death sentence. Ex parte Carroll, No. 1170575, 2019 WL 1499322 (Ala. Apr. 5, 2019). On September 20, 2019, the Alabama Supreme Court denied rehearing. On December 17, 2019, Justice Thomas extended the time for filing this petition for a writ of certiorari to January 23, 2020. Jurisdiction is invoked pursuant to 28 U.S.C. § 1257(a).

RELEVANT CONSTITUTIONAL PROVISIONS

The Eighth Amendment to the United States Constitution provides:

> Excessive bail shall not be required, nor excessive fines be imposed, nor cruel and unusual punishments inflicted.

The Fourteenth Amendment to the United States Constitution provides in part:

> No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without the due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On November 6, 2009, Taurus Carroll was indicted on two counts of capital murder related to the death of fellow prisoner Michael Turner, in violation of Alabama Code §§ 13A-5-40(a)(6) & 13A-5-40(a)(13). (C. 7.)[1] On May 7, 2012, after a hearing on the matter, the trial court held that Mr. Carroll was not intellectually disabled and thus was eligible for the death penalty. (C. 127.) On September 20, 2012, the jury convicted Mr. Carroll of capital murder. (C. 148-49.) That same day, the jury recommended a sentence of death. (C. 150.) On November 20, 2012, the trial court sentenced Mr. Carroll to death. (C. 164.)

Evidence presented at trial showed that Mr. Carroll is intellectually disabled. At the pretrial hearing, defense expert Dr. Robert Shaffer,[2] a neuropsychologist and

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[1]"C." denotes the clerk's record, and "R." denotes the reporter's transcript.

[2]Dr. Shaffer spent thirteen and a half hours directly interacting with Mr. Carroll (R. 98), and fifty additional hours compiling information relevant to his evaluation by

forensic psychologist (R. 93), opined that Mr. Carroll was intellectually disabled because he suffered from significant deficits in intellectual functioning and adaptive behavior, both of which manifested prior to the age of 18. (R. 125-26.) It is undisputed that Mr. Carroll has subaverage intellectual functioning: the State and defense agreed that Mr. Carroll's full-scale IQ was 71 (C. 123), as determined by court-appointed expert Dr. Jerry Gragg (C. 87, 91-93; R. 96).

Additionally, the evidence establishes that Mr. Carroll has significant deficits in adaptive functioning. Dr. Shaffer conducted the Halstead Reitan Neuropsychological Test battery, a test of brain function. (R. 110-11.) Mr. Carroll scored in the impaired range on nine of the fourteen measures, and scored in the average range on only one of the measures. (R. 111-12.) Dr. Shaffer also administered the Weschler Individual Achievement Test (WAIS) to evaluate Mr. Carroll's academic learning proficiency, one of the ten adaptive behavior categories. (R. 114.) Mr. Carroll scored in the lowest percentile on this exam. (R. 114-15.) Dr. Shaffer's administration of the Test of Memory Malingering indicated that Mr. Carroll was not malingering but was putting forth his best effort during the evaluation. (R. 112-14.)

Dr. Shaffer also administered the Vineland Adaptive Behavior Scales (Vineland-2), which included an extensive interview of Derrick Carroll, an uncle of Mr. Carroll's with whom he had lived from the age of seven to the age of fifteen. (R. 112, 115-17, 129.) Dr. Shaffer then administered the Adaptive Behavior Assessment System

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reviewing records and interviewing family members (R. 98-99).

(ABAS-2) to Jerry Jones, another of Mr. Carroll's uncles who lived with him from the age of thirteen to the age of fifteen. (R. 112, 117, 119, 129.) Dr. Shaffer found that Mr. Carroll had scored in the lowest percentile on both assessments in seven of the ten areas evaluated: communication, functional academic skills, self-care, home living, health and safety, self-direction, and social interpersonal skills. (R. 119-20.) Dr. Shaffer testified that Mr. Carroll's significant deficits in these areas of adaptive functioning had existed since childhood. (R. 126.)

Clinical social worker Susan Wardell[3] testified that Mr. Carroll was the son of a physically abusive crack addict and alcoholic and that his childhood was filled with physical, emotional, and sexual abuse, as well as neglect and malnutrition. (R. 56-60, 64, 67-68.)[4] Ms. Wardell also found that a number of head injuries and incarceration

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[3]Ms. Wardell was qualified by the trial court as an expert in the fields of adaptive behavior and social history. (R. 54.) She testified for the defense as to her investigation of Mr. Carroll's adaptive functioning skills. (R. 48-91.) In addition to reviewing his records from the Department of Human Resources (DHR) and the Department of Corrections (DOC), she met with Mr. Carroll for five hours and interviewed nine members of his family, all of whom had experience with him during his developmental years. (R. 55, 65-66.) In all, Ms. Wardell spent over 100 hours reconstructing Mr. Carroll's social history. (R. 68.)

[4]Ms. Wardell described the conditions of Mr. Carroll's childhood as "worse than animals are typically treated." (R. 796); see also Moore v. Texas, 137 S. Ct. 1039, 1051 (2017) ("Those traumatic experiences, however, count in the medical community as *risk factors* for intellectual disability." (quotation marks and citations omitted; emphasis in original)). His mother used belts and extension cords to beat him so severely that she left welts and bruises. (C. 255; R. 58, 795.) At two years old, he was taken to the emergency room after he was anally raped by a neighbor's older relative. (C. 343, 361; R. 59, 795-96, 857.) At the age of seven, he contracted gonorrhea from a seven-year-old girl. (C. 280, 291, 346; R. 59, 78.) Neighbors reported that he and his siblings often went unfed. (R. 794.) Mr. Carroll's elementary school reported that "Taurus is very thin" and that "he has an unusual number of scars on his arms." (C. 422; see also R.

as a child in an adult prison negatively impacted Mr. Carroll's brain development. (R. 64, 88-89.) Five of Mr. Carroll's uncles, his two sisters, and his cousin confirmed that he struggled with simple daily tasks as a child and that he was gullible and a follower. (R. 65-66, 79-80, 86-87, 89.)

Mr. Carroll was placed in special classes and given one-on-one teachers who tried to help, but even then he had great trouble learning. (C. 395; R. 56, 865.) Mr. Carroll's relatives reported that he could not do his homework because he did not understand the concepts. (R. 66.) He failed the first grade twice and then failed the eighth grade twice as well. (R. 56.) He was recommended for, and then placed in, special education classes. (C. 395, 397; R. 870.) Ms. Wardell opined that, based upon her investigation, Mr. Carroll suffered from significant deficits in adaptive functioning from his developmental years up to the present. (R. 70.)

In rebuttal, the State relied on the testimony of Dr. Susan Ford,[5] who administered the Adaptive Behavior Scale - Residential and Community Living 2nd (ABS-RC:2). (R. 150.) The ABS-RC:2 had six levels, from "extremely low" to "very superior," and Mr. Carroll scored "above average" or "superior" in each category. (R. 152, 155-56.) Dr. Ford agreed that the ABS-RC:2 was "normed on the standardization

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861.) At the age of ten, he went to the emergency room and was diagnosed with pyoderma, a skin lesion caused by infrequent bathing. (R. 865-66.) As a result of this ongoing neglect and abuse, he was twice removed from his mother's custody. (C. 263; R. 58, 68, 869-70.)

[5]Dr. Ford met with Mr. Carroll once for "close to two hours." (R. 150; see also R. 183.)

sample of people who have [intellectual disability]" (R. 159; see also R. 152), and relied solely on self-reporting (R. 153), but insisted that the ABS-RC:2 was "a test that is recognized in the field of psychology as an appropriate and reliable means to measure adaptive functioning" (R. 150; see also R. 191).

In addition to the results of the ABS-RC:2, Dr. Ford based her conclusion that Mr. Carroll currently fell in the borderline range of adaptive functioning, one level above intellectual disability (R. 156), on the following evidence: (1) Mr. Carroll's self-report that he worked in the prison kitchen, read novels, could use an ATM card, and passed the GED (R. 161-66, 170-71); (2) the circumstances of Mr. Carroll's offense, which she found to be inconsistent with intellectual disability because "people with [intellectual disability] tend to be more impulsive" (R. 177-78); (3) a DOC review by Dr. David Sandefer that noted that Mr. Carroll's intellectual functioning was "below average" (R. 180-81); and (4) Dr. Glen King's assessment of Mr. Carroll's competency to stand trial, in which he noted that Mr. Carroll's intellectual ability was "average" (R. 181-82). Dr. Ford did not present any opinion as to Mr. Carroll's intellectual functioning prior to the age of 18. (R. 143-97.)

Additionally, the State relied on DOC Officer Brian Griffith's testimony that Mr. Carroll worked in the prison kitchen and:

> If I'm not wrong, I want to say he was a baker. But there were so many – you know, there are so many kitchen workers coming and going in and out. They all overlap and do each other's jobs and all that. . . .

(R. 199.) Officer Griffith recalled observing Mr. Carroll doing the same activity

repetitively most of the time. (R. 210.)

Finally, the State called DOC Investigator M.C. Smith, who testified that he interviewed Mr. Carroll with regard to the charged crime and that Mr. Carroll "responded to the questions" (R. 217), and that he searched Mr. Carroll's cell and found several books and magazines (R. 219-20), although he could not say whether Mr. Carroll was able to read any of them (R. 222).

Following the Atkins hearing, the trial court found that Mr. Carroll's IQ score of 71 "places him outside the Alabama Supreme Court's definition of [intellectual disability]." (C. 123.) In terms of adaptive functioning, the trial court relied on Dr. Ford's ABS-RC:2 test results and her interview with Mr. Carroll, Dr. King's and Dr. Sandefer's observations, and the testimony of the two DOC employees to conclude that Mr. Carroll did not have significant deficits in adaptive functioning and was not intellectually disabled. (C. 126-27.)

On appeal, Mr. Carroll argued that the trial court's reliance on Dr. Ford's ABS-RC:2 assessment was inappropriate and that it constituted reversible error to rely on the ABS-RC:2 to rebut the affirmative evidence of intellectual disability. Nevertheless, the Alabama Court of Criminal Appeals refused to question the trial court's reliance on the ABS-RC:2 assessment in finding that Mr. Carroll was not intellectually disabled. Carroll v. State, 215 So. 3d 1135, 1152-53 (Ala. Crim. App. 2015). Moreover, the court relied on Dr. Ford's testimony regarding the ABS-RC:2 to reject Dr. Shaffer's determination that Mr. Carroll is intellectually disabled:

> [I]t is not this Court's role to second-guess the circuit court's credibility determination relating to the opinions of two competing psychologists. Based on Dr. Ford's testimony, the circuit court did not abuse its discretion in finding that Carroll failed to prove that he currently exhibits deficits in his adaptive functioning.

Id. at 1153. The Alabama Supreme Court denied Mr. Carroll's petition for a writ of certiorari.

In a petition to this Court, Mr. Carroll argued that the trial court's reliance on evidence that did not adhere to current medical standards violated Atkins v. Virginia, 536 U.S. 304 (2002), and Hall v. Florida, 572 U.S. 701 (2014). This Court then granted certiorari and remanded Mr. Carroll's case back to the Alabama appellate courts to reevaluate the evidence "in light of" Moore v. Texas, 137 S. Ct. 1039 (2017). Carroll v. Alabama, 137 S. Ct. 2093 (2017). On remand, the Alabama Court of Criminal Appeals once again found that the "disagreement" between Dr. Shaffer and Dr. Ford over reliance on the ABS-RC:2 amounted to "an issue of credibility" and again held that "it is not this Court's role to second-guess the circuit court's credibility determination relating to two competing psychologists' opinions." Carroll v. State, No. CR–12–0599, 2017 WL 6398236, at *5-6 (Ala. Crim. App. Dec. 15, 2017). The court also found that Dr. Ford's own testimony that the ABS-RC:2 was appropriate and reliable amounted to "evidence in the record indicating that Dr. Ford's opinion complied with the 'medical community's current standards' and the Supreme Court's opinion in Moore, 137 S. Ct. at 1053." Carroll, 2017 WL 6398236, at *6.

The Alabama Supreme Court granted Mr. Carroll's petition for certiorari and

similarly affirmed the trial court's determination. Ex parte Carroll, No. 1170575, 2019 WL 1499322, at *14 (Ala. Apr. 5, 2019). After finding that "there is no dispute that Carroll has 'subaverage intellectual functioning,'" id. at *2, the court addressed the central question implicated by this Court's decision in Moore: whether the trial court's reliance on the ABS-RC:2 to rebut affirmative evidence of intellectual disability was improper in light of the fact that the ABS-RC:2 is not medically valid in the Atkins context. Id. at *7-10. And, despite acknowledging that courts throughout the country have found the ABS-RC:2 to be inappropriate for assessing the adaptive functioning of criminal defendants, the Alabama Supreme Court nevertheless refused to question the trial court's use of the assessment to discount the testimony regarding intellectual disability. Id. at *10-11. The lower court concluded: "This Court, therefore, will not question the circuit court's discounting of Dr. Shaffer's opinion." Id. at *12. It found the testimony of State expert Dr. Ford and defense expert Dr. Shaffer regarding the reliability of the ABS-RC:2 to be "conflicting," id. at *10, and therefore deferred to the trial court's reliance on other evidence of Mr. Carroll's adaptive functioning, including the testimony of laypersons regarding their impressions of Mr. Carroll's behavior in prison and ability to respond to questions. Id. at *11-12.

REASONS FOR GRANTING THE WRIT

I. THIS COURT SHOULD GRANT CERTIORARI AND REVERSE THE JUDGMENT BELOW BECAUSE THE LOWER COURT DISREGARDED CURRENT MEDICAL STANDARDS.

Taurus Carroll was sentenced to death despite the fact that he is intellectually disabled and therefore ineligible for the death penalty pursuant to Atkins v. Virginia, 536 U.S. 304 (2002). Mr. Carroll's IQ score of 71 falls within the range of significantly subaverage intellectual functioning; his scores on valid and standardized assessments of adaptive functioning establish that he has significant deficits in seven of ten areas; and comprehensive evaluations of his childhood show that his intellectual disability manifested during that period. (R. 70-71, 101, 111, 114-16, 119, 125-26.)

In rejecting this evidence and finding Mr. Carroll to not be intellectually disabled, the trial court—without the benefit of Moore v. Texas, 137 S. Ct. 1039 (2017) [hereinafter Moore I]; Moore v. Texas, 139 S. Ct. 666 (2019) [hereinafter Moore II]; Brumfield v. Cain, 135 S. Ct. 2269 (2015); or Hall v. Florida, 572 U.S. 701 (2014)—relied on a State expert's testimony about the results of the ABS-RC:2 assessment, on the circumstances of the crime, and on the testimony of DOC officers concerning Mr. Carroll's conduct in prison and response to interrogation. (C. 126-27.) On remand, rather than reevaluating the evidence in light of Moore I, as this Court directed, and acknowledging that the State expert's testimony did not comply with current medical standards, the Alabama Supreme Court used the medically inappropriate assessment to find a "conflict[]" with the medically sound testimony from

the defense expert, and found that "it was reasonable for the circuit court to look to other evidence of Carroll's adaptive functioning to reconcile the experts' competing opinions regarding his abilities." Ex parte Carroll, No. 1170575, 2019 WL 1499322, at *11 (Ala. Apr. 5, 2019). The Alabama Supreme Court then affirmed the trial court's reliance on the same types of evidence—adaptive strengths, prison behavior, lay opinions—disapproved of by current medical standards and by this Court in Moore I. Carroll, 2019 WL 1499322, at *11-12. Despite acknowledging that "the reliability of the ABS-RC:2 has been questioned" repeatedly, id. at *10, it nevertheless held that it "w[ould] not question the circuit court's discounting of [the defense expert's] opinion." Id. at *12.

A. The Alabama Supreme Court's Refusal to Question the Trial Court's Reliance on the ABS-RC:2 Disregards Current Medical Standards and Conflicts with Moore I, Moore II, Brumfield, and Hall.

The State's primary evidence that Mr. Carroll was not intellectually disabled was Dr. Ford's administration of the ABS-RC:2, by which she determined that Mr. Carroll functions "in the borderline range of adaptive functioning currently." (R. 156.) In rejecting his claim of intellectual disability, the trial court found "compelling the description of the defendant's current level of adaptive functioning as described by Dr. Ford." (C. 126-27.)

In its opinion, the Alabama Supreme Court cited to five cases from across the country in which courts found that the ABS-RC:2 did **not** comply with the medical

community's current standards, and cited to no cases finding that the ABS-RC:2 complied with those standards. Carroll, 2019 WL 1499322, at *10. However, rather than reevaluate Dr. Ford's improper assessment and Dr. Shaffer's comprehensive evaluation based on current medical standards, the Alabama Supreme Court instead held that the very test it recognized to not comply with current medical standards could be used as the primary basis for determining that the experts' opinions were "conflicting." Id. at *11.

The court below should have held that Dr. Ford's reliance on the ABS-RC:2 in the Atkins context "goes against the unanimous professional consensus," Hall, 572 U.S. at 722 (citation omitted), and "disregard[s] established medical practice," Moore I, 137 S. Ct. at 1049 (quotation marks and citations omitted):

> The Adaptive Behavior Scale–Residential and Community Edition (ABS-RC:2; Nihira, Leland, & Lambert, 1993) is normed on individuals with [intellectual disability] (living in the community and in institutional/residential settings). **Because of this reason, the ABS-RC:2 is an inappropriate instrument to be used in assessing adaptive behavior for the purpose of making or ruling out a diagnosis of [intellectual disability].**

Mark J. Tassé, *Adaptive Behavior Assessment and the Diagnosis of Mental Retardation in Capital Cases*, 16 APPLIED NEUROPSYCHOLOGY 114, 117 (2009) (emphasis added); see also J. Gregory Olley, *Adaptive Behavior Instruments*, *in* THE DEATH PENALTY AND INTELLECTUAL DISABILITY 187 (Edward A. Polloway ed., 2015) (excluding ABS-RC:2 from list of Atkins adaptive behavior assessments that meet "contemporary standards for standardization, reliability, and validity"); American Association of Intellectual and

Developmental Disabilities, *Intellectual Disability: Definition, Classification, and Systems of Supports* (11th ed. text revision 2010) 49 (hereinafter "AAIDD Manual") (adaptive behavior instruments "should have current norms developed on a representative sample of *the general population*" (emphasis added)); Wysong ex rel. Ramsey v. Walker, 686 S.E.2d 219, 222 (W. Va. 2009) ("[The ABS-RC:2] is designed to compare the adaptive skills of one adult with that of other adults who have similar disabilities."); Pruitt v. State, 834 N.E.2d 90, 109-10 (Ind. 2005) (finding that ABS-RC:2 compared defendant to "institutionalized population made up entirely of [intellectually disabled] individuals, not to the general population"); (R. 104-08, 152, 159, 190-91 (Dr. Shaffer and Dr. Ford both testifying that ABS-RC:2 normed on population of intellectually disabled)).

Because the ABS-RC:2 is normed on the population of intellectually disabled people, it "identif[ies] only individuals with IQs of 60 or less as [intellectually disabled]," and using this test "would eliminate approximately 75 to 89 percent of all individuals clinically diagnosed as [intellectually disabled] under the standard medical definitions." Pruitt, 834 N.E.2d at 109; see also Moore, 137 S. Ct. at 1051 ("States may not execute anyone in the *entire category* of [intellectually disabled] offenders." (quotation marks and citation omitted; emphasis in original)). There is no clinical support for using the ABS-RC:2 to assess whether a defendant is intellectually disabled for the purposes of Atkins. See, e.g., Reeves v. State, 226 So. 3d 711, 735 (Ala. Crim. App. 2016) (noting State expert's concession that ABS-RC:2 did not meet current

professional standards); Pruitt, 834 N.E.2d at 109-10 (finding ABS-RC:2 deviated from current clinical standards).

The Alabama Supreme Court's reliance upon Dr. Ford's administration of the ABS-RC:2 in its determination that Mr. Carroll does not suffer from adaptive deficits conflicts with clear medical standards and, more importantly, with this Court's precedent requiring adherence to those standards, Moore II, 139 S. Ct. at 672; Moore I, 137 S. Ct. at 1053; Brumfield, 135 S. Ct. at 2278-79; Hall, 572 U.S. at 721-22, and violates this Court's order for "further consideration [of Mr. Carroll's case] in light of" Moore I, Carroll v. Alabama, 137 S. Ct. 2093 (2017).

B. The Alabama Supreme Court's Refusal to Question the Trial Court's Reliance on Lay Opinions and Adaptive Strengths Observed in Prison Disregards Current Medical Standards and Conflicts with Moore I, Moore II, Brumfield, and Hall.

In addition to refusing to discount the trial court's reliance on the ABS-RC:2, the Alabama Supreme Court also deferred to the trial court's findings from 2012 that Mr. Carroll does not have significant deficits in adaptive functioning based on lay opinions, adaptive strengths developed in prison, and unreliable evaluations. Carroll, 2019 WL 1499322, at *11-12; (C. 126-27). Since 2012, this Court has specifically recognized that these types of evidence do not meet current medical standards. See Moore II, 139 S. Ct. at 670 ("[T]he court of appeals again relied less upon the adaptive *deficits* to which the trial court had referred than upon Moore's apparent adaptive *strengths*." (emphasis in original)); id. at 671 (disapproving of lower court's heavy reliance "upon adaptive

improvements made in prison."); Moore I, 137 S. Ct. at 1050 ("[T]he medical community focuses the adaptive-functioning inquiry on adaptive *deficits*." (emphasis in original)); id. at 1052 ("[Lay] stereotypes, much more than medical and clinical appraisals, should spark skepticism.") id. at 1050 ("Clinicians, however, caution against reliance on adaptive strengths developed 'in a controlled setting,' as a prison surely is."); Brumfield, 135 S. Ct. at 2278-79 (disapproving of reliance on examination that was not "sufficiently rigorous").

First, the Alabama Supreme Court affirmed the trial court's reliance on Dr. Ford's interview of Mr. Carroll, during which he reported that making biscuits in the prison kitchen, reading novels,[6] using an ATM card, and passing the GED examination while in prison.[7] Carroll, 2019 WL 1499322, at *11-12. In deferring to the trial court's reliance upon Dr. Ford's interview, the Alabama Supreme Court ignored current medical standards, which caution against reliance upon adaptive strengths developed

[6]However, when Dr. Ford asked Mr. Carroll which novels he read, he could not name any titles and then said that he liked self-help books and the sports page. (R. 163-64, 184-85); see also James W. Ellis, Caroline Everington & Ann M. Delpha, *Evaluating Intellectual Disability: Clinical Assessments in Atkins Cases,* 46 HOFSTRA L. REV. 1305, 1367 (2018) (noting "intense motivation" of intellectually disabled individuals "to *mask* their limitations" (emphasis in original)).

[7]The sole evidence of Mr. Carroll's performance on the GED examination was his self-reporting. (C. 81, 105; R. 170.) Both Dr. Shaffer and Ms. Wardell testified that an intellectually disabled person could earn their GED with repetition and support. (R. 62, 133.) Dr. Ford testified that "most individuals [with intellectual disability] would not be able to pass the GED," but "[t]hey might be able to pass some portions of it orally." (R. 171.) Dr. Ford did not know whether Mr. Carroll took a written or oral examination. (R. 188.)

in prison,[8] see, e.g., Moore I, 137 S. Ct. at 1050; lay perceptions of the capabilities of the intellectually disabled, see, e.g., Moore I, 137 S. Ct. at 1052; and self-reporting, see, e.g., James W. Ellis, Caroline Everington & Ann M. Delpha, *Evaluating Intellectual Disability: Clinical Assessments in Atkins Cases,* 46 HOFSTRA L. REV. 1305, 1385 (2018) ("[T]here is a widespread consensus that warns against reliance on self-reports in assessing adaptive functioning for purposes of diagnosing intellectual disability."). See also Jackson v. Kelley, 898 F.3d 859, 865 (8th Cir. 2018) (finding that lower court "inappropriately found that Jackson was not intellectually disabled because his adaptive strengths outweighed his adaptive deficits"); Commonwealth v. VanDivner, 178 A.3d 108, 125 (Pa. 2018) (finding that defendant "suffers from significant adaptive limitations in the areas of conceptual, practical and social skills, *notwithstanding* the fact that he was able to pass a non-written CDL exam after extended study" (emphasis

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[8]The trial court focused almost exclusively on Mr. Carroll's adaptive strengths. (C. 124-27.) For example, when evaluating Mr. Carroll's adaptive functioning, neither the trial court nor the Alabama Supreme Court mentioned Susan Wardell, who spent over 100 hours investigating Mr. Carroll's social history and adaptive functioning skills. (R. 68.) She met with Mr. Carroll for five hours and interviewed nine members of his family, all of whom had experience with him during his developmental years. (R. 55, 65-66.) The family reported that Mr. Carroll was unable to prepare a meal or redirect himself and that he had "difficulty learning anything" as a child. (R. 65, 67.) Ms. Wardell also testified regarding Mr. Carroll's mother's drug and alcohol use during pregnancy and the poverty, abuse, neglect, and head injuries he suffered during his childhood. (R. 65); see also Moore, 137 S. Ct. at 1051 ("Those traumatic experiences [childhood abuse, suffering] . . . count in the medical community as '*risk factors*' for intellectual disability." (emphasis in original)). Ms. Wardell concluded that Mr. Carroll suffered from significant deficits in adaptive functioning from his developmental years up to the present. (R. 70.)

in original)); AAIDD Manual 47 ("[I]n the process of diagnosing [intellectual disability], significant limitations in conceptual, social, or practical adaptive skills [are] not outweighed by the potential strengths in some adaptive skills."); Ellis, et al., *Evaluating Intellectual Disability* 1393 ("[T]he diagnostic evaluation of adaptive behavior focuses on the individual's weaknesses, and does not 'balance' them against those things the individual actually can do."); American Association of Intellectual and Developmental Disabilities, *User's Guide: Mental Retardation Definition, Classification and Systems of Support* 20 (10th ed. text revision 2007) (hereinafter "AAIDD User's Guide") (counseling against reliance on "behavior in jail or prison"); Gary N. Siperstein & Melissa A. Collins, *Intellectual Disability*, in THE DEATH PENALTY AND INTELLECTUAL DISABILITY 21, 27 (Edward A. Polloway ed., 2015) ("[R]esearch has demonstrated [intellectually disabled people's] ability to master independent living skills, such as using ATMs, cooking, and making financial decisions."); Robert R. Moran, Suzanne McDermott & Stanley Butkus, *Getting a Job, Sustaining a Job, and Losing a Job for Individuals with Mental Retardation*, 16 J. VOCATIONAL REHABILITATION 237, 241 (2001) (discussing job retention rates for categories such as food preparation); Marc J. Tassé, Robert L. Schalock, Giulia Balboni, Hank Bersani, Jr., Sharon A. Borthwick-Duffy, Scott Spreat, David Thissen, Keith F. Widman & Dalun Zhang, *The Construct of Adaptive Behavior: Its Conceptualization, Measurement, and Use in the Field of Intellectual Disability*, 117 AM. J. ON INTELLECTUAL & DEVELOPMENTAL

DISABILITIES 291, 296 (2012) ("[V]irtually all experts in the assessment of adaptive behaviors agree with this position [warning against reliance on self-reports].").

Second, the Alabama Supreme Court deferred to the trial court's reliance upon observations made by Dr. King and Dr. Sandefer. Carroll, 2019 WL 1499322, at *11. Dr. King evaluated Mr. Carroll's competence to stand trial and mental state at the time of the offense (C. 79-84), and noted that Mr. Carroll's "intellectual ability is average" (C. 82). Dr. King did not assess Mr. Carroll's IQ or his adaptive functioning. (C. 80, 85.) Dr. Sandefer evaluated Mr. Carroll as part of an Alabama Department of Corrections 30/90-day-segregation review, and noted that Mr. Carroll's intellectual functioning was "below average."[9] (C. 125; R. 180-81.) The segregation review was not entered into evidence, and there is no indication that Dr. Sandefer conducted any assessment, let alone a comprehensive evaluation, of Mr. Carroll's adaptive functioning. (R. 109-10.) Neither Dr. King nor Dr. Sandefer testified at the Atkins hearing or at any other time during Mr. Carroll's trial. The trial court's weighing of these observations over the testimony of defense expert Dr. Shaffer's comprehensive evaluation[10] contravenes current medical standards. See AAIDD Manual 100 ("A valid

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[9]As Dr. Shaffer testified, Dr. Sandefer's observation was made during a prison segregation review and was likely "a global impression" that Mr. Carroll's intellectual functioning was "somewhere below the average." (R. 109-10.)

[10]Dr. Shaffer conducted the type of comprehensive evaluation of adaptive functioning required by current medical standards. See, e.g., AAIDD Manual 100. He spent thirteen and a half hours with Mr. Carroll and fifty additional hours compiling records and interviewing family members. (R. 98-99.) He tested Mr. Carroll's brain

diagnosis of [intellectual disability] is based on multiple sources of information that include a thorough history (social, medical, educational), standardized assessments of intellectual functioning and adaptive behavior, and possibly additional assessments or data relevant to the diagnosis."); id. at 95-96 (directing clinicians to assess adaptive behavior using multiple informants and multiple contexts); AAIDD User's Guide 14-22 (describing "comprehensive diagnostic process"); American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* 39 (5th ed. text revision 2013) (hereinafter "DSM-5") (describing "comprehensive evaluation" of intellectual disability).

Third, the Alabama Supreme Court erroneously sanctioned the trial court's reliance upon the testimony of two prison employees, Carroll, 2019 WL 1499322, at *11-12, which the trial court had found "particularly compelling" (C. 126). Officer Brian Griffith observed Mr. Carroll in the prison kitchen:

> If I'm not wrong, I want to say he was a baker. But there were so many – you know, there are so many kitchen workers coming and going in and out. They all overlap and do each other's jobs and all that . . .

(R. 199.) Officer Griffith recalled observing Mr. Carroll doing the same activity

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functioning and academic learning proficiency (R. 110-12, 114-15), administered an assessment to confirm that Mr. Carroll was not malingering (R. 112-13), and then administered the Vineland-2 and ABAS-2, adaptive behavior assessments that adhere to current medical standards, to two of Mr. Carroll's uncles (R. 115-19). See also Olley, *Adaptive Behavior Instruments* 187 (listing Vineland-2, ABAS-2, and Scales of Independent Behavior-Revised as only Atkins adaptive behavior assessments that meet "contemporary standards for standardization, reliability, and validity").

repetitively most of the time. (R. 209-10). St. Clair Prison Investigator M.C. Smith testified that he interviewed Mr. Carroll with regard to the charged crime and that Mr. Carroll "responded to the questions." (R. 217); see also Moore II, 139 S. Ct. at 671 ("Briseno asked whether the defendant could respond coherently, rationally, and on point to oral and written questions." (quotation marks and citations omitted)). Investigator Smith then searched Mr. Carroll's cell and found several books and magazines (R. 219-20), although he could not say whether Mr. Carroll was able to read any of them (R. 222). See Caroline Everington, *Challenges of Conveying Intellectual Disabilities to Judge and Jury*, 23 WM. & MARY BILL OF RIGHTS J. 467, 475-76 (2014) ("[J]ust being observed with a book or a newspaper does not mean that the defendant is able to comprehend and explain what was read.").

In deferring to the trial court's reliance upon this testimony, the Alabama Supreme Court ignored current medical standards, which caution against reliance upon lay stereotypes and "adaptive strengths developed 'in a controlled setting.'" Moore I, 137 S. Ct. at 1050 (quoting DSM-5 38); see also Moore II, 139 S. Ct. at 671 ("The length and detail of the court's discussion on these points is difficult to square with our caution against relying on prison-based development."); Moore I, 137 S. Ct. at 1052 ("[Lay] stereotypes, much more than medical and clinical appraisals, should spark skepticism."); Smith v. Sharp, 935 F.3d 1064, 1086–87 (10th Cir. 2019) (finding defendant intellectually disabled in part by disregarding testimony of insurance agent, work supervisor, and prison case manager because "these individuals have no

experience in diagnosing intellectual disability, and based their opinions exclusively on lay stereotypes"); AAIDD Manual 151 (criticizing "incorrect stereotypes that these individuals never have friends, jobs, spouses, or children"); J. Gregory Olley & Ann W. Cox, *Assessment of Adaptive Behavior in Adult Forensic Cases: The Use of the Adaptive Behavior Assessment System-II*, in ADAPTIVE BEHAVIOR ASSESSMENT SYSTEM-II: CLINICAL USE AND INTERPRETATION 381, 386 (2008) ("[R]eports from corrections officers or other observations of current functioning in prison are not valid indicators of level of adaptive behavior."); Caroline Everington & J. Gregory Olley, *Implications of Atkins v. Virginia: Issues in Defining and Diagnosing Mental Retardation*, 8 J. FORENSIC PSYCHOLOGY PRACTICE, no. 1, 2008, at 12 ("[T]he limited opportunities available to people in prison make it impossible to assess adaptive behavior within the context of community environments . . . ." (quotation marks omitted)).

Based upon this evidence, the Alabama Supreme Court held that "we cannot conclude that the circuit court exceeded its discretion in concluding that Carroll did not have significant or substantial deficits in adaptive functioning." Carroll, 2019 WL 1499322, at *12. Contrary to this Court's directive to reconsider Mr. Carroll's case, the Alabama Supreme Court's deferral to the trial court's findings, which ignored current medical standards, conflicts with Moore I, Moore II, Brumfield, and Hall, and "rests upon analysis too much of which too closely resembles what [this Court] previously found improper." Moore II, 139 S. Ct. at 672; see also id. (Roberts, C.J., concurring) ("[T]he court repeated the same errors that this Court previously condemned—if not

quite *in haec verba*, certainly in substance.").

CONCLUSION

For the foregoing reasons, Petitioner prays that this Court grant a writ of certiorari and reverse the judgment of the Alabama Supreme Court.

Respectfully Submitted,

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