No. 19-7699

(CAPITAL CASE)

IN THE
Supreme Court of the United States

ANTHONY CARR,
Petitioner,

vs.

STATE OF MISSISSIPPI,
Respondent.

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

REPLY BRIEF OF PETITIONER

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I. The Mississippi Supreme Court established an erroneous legal standard for evaluating adaptive functioning deficits in *Atkins* cases.

In its brief, the State of Mississippi writes that "[i]t is difficult to imagine a scenario where the use of the very word utilized by the Court and the Diagnostic and Statistical Manual of Mental Disorders (DSM-V) would be considered error when used by the Mississippi Supreme Court." Br. of Resp. at 13. But in fact, Mr. Carr's Petition for a Writ of Certiorari explained why the use of the "so severe" language is erroneous.[1]

To clear up any confusion that may be caused by the State's argument that the term "so severe" is properly a part of the definition of intellectual disability (ID), consider, first, the definitions in the DSM-5 (published by the American Psychiatric Association) and in the manual published by the American Association on Intellectual and Developmental Disabilities (AAIDD). Both of these authorities (in their previous editions) were cited with approval by this Court in *Atkins v. Virginia*, 536 U.S. 304, 122 S. Ct. 2242, 153 L. Ed. 2d 335 (2002). First, the DSM-5 definition:

> Intellectual disability (intellectual developmental disorder) is a disorder with onset during the developmental period that includes both intellectual and adaptive functioning deficits in conceptual, social, and practical domains."

Am. Psych. Ass'n, *Diagnostic and Statistical Manual of Mental Disorders* 33 (5th ed.

[1] See Pet. at Section I beginning on beginning on p. 11. In preparing this Reply Brief, undersigned counsel noticed an error in the petition. In Section I of the petition, it is stated that the term "so severe" appears in the DSM-5. In fact, the actual language in the manual is "such severe."

2013). Then follow certain "criteria" that "must be met" for each of the three prongs of the test for ID. *Id*. The criteria for prong 2, adaptive functioning deficits, include:

> Deficits in adaptive functioning that result in failure to meet developmental and sociocultural standards for personal independence and social responsibility. Without ongoing support, the adaptive deficits limit functioning in one or more activities of daily life, such as communication, social participation, and independent living, across multiple environments, such as home, school, work, and community.

Id.

And here is the AAIDD definition, from the eleventh edition of its manual:

> Intellectual Disability is characterized by significant limitations in both intellectual functioning and in adaptive behavior as expressed in conceptual, social, and practical adaptive skills. This disability originates before age 18.

Am. Ass'n on Intellectual and Developmental Disabilities, *Intellectual Disability: Definition, Classification, and Systems of Support* 1 (11th ed. 2010) [hereinafter "AAIDD Manual"].

The DSM-5 definition appears at the beginning of the section of the manual titled "Intellectual Disability (Intellectual Developmental Disorder)," on page 33, in the subsection labeled "Diagnostic Criteria." Notice that the Diagnostic Criteria do not contain the word "severe."

Nor does that term occur in the AAIDD definition. In fact, it does not appear anywhere in Chapter 1 of the manual, which is titled "Definition of Intellectual Disability."

The word "severe" does appear in the DSM-5. But its context is critically important—and the State's brief blurs this crucial point. It is not in the Diagnostic Criteria. It occurs four pages later, in a subsection titled "Diagnostic Features." DSM-

5 at 37.

The language is not "so severe," as the Mississippi Supreme Court rephrased it, but rather "such severe." *Id*. And the paragraph in which this wording appears is not primarily about adaptive functioning deficits, not about prong 2 of the definition. It is about the significance and interpretation of IQ scores. It states that

> IQ scores are approximations of conceptual functioning but may be insufficient to assess reasoning in real-life situations and mastery of practical tasks. For example, a person with an IQ score above 70 may have such severe adaptive behavior problems in social judgment, social understanding, and other areas of adaptive functioning that the person's actual functioning is comparable to that of individuals with a lower IQ score. Thus, clinical judgment is needed in interpreting the results of IQ tests.

Id.

The point of this passage is to sound a warning against over-reliance on IQ scores in diagnosing ID (a danger that the authors of the DSM-5 apparently wanted to emphasize in this revision of the manual; *see, e.g.*, Nancy Haydt, J.D., et al., *Advantages of DSM-5 in the Diagnosis of Intellectual Disability: Reduced Reliance on IQ Ceilings in* Atkins *(Death Penalty) Cases*, 82 UMKC L. Rev. 359 (2014) (explaining the "DSM-5 as the culmination of efforts to reduce reliance on IQ cut-offs," scholarship that, like the DSM-5 itself, was published shortly before this Court's decision in *Hall v. Florida*, 572 U.S. 701, 134 S. Ct. 1986, 188 L. Ed. 2d 1007 (2014)). The paragraph is not primarily concerned with evaluating prong 2, and it clearly is not part of the definition—the "Diagnostic Criteria"—of intellectual disability.

The paragraph presents a hypothetical (in a sentence that begins "For example") about a subject whose IQ is "above 70." The hypothetical subject's score is

high enough to create doubt about the validity of a diagnosis of intellectual disability. The passage offers advice to an examiner about what to do in such a situation.

This hypothetical does not correspond to Mr. Carr's situation. One of his IQ scores is not above 70. The other two are close, and when the standard error of measurement is applied they are not high enough to be of concern. That may explain, in part at least, why not one of the three mental health experts who examined Mr. Carr and who testified about his mental condition could state that he is not intellectually disabled. (Two testified that he is and the other said he could not make a determination.)

By essentially inserting the term "so severe" into the definition of ID, the Mississippi Supreme Court fundamentally and impermissibly changed the definition. The scientifically correct modifier of the term "limitations" in the definition is not "severe" but rather "significant": "Intellectual Disability is characterized by significant limitations in both intellectual functioning and in adaptive behavior . . . ." AAIDD Manual at 1. Clearly, requiring a finding of "severe" limitations rather than "significant" ones changes the meaning and leads to what has been referred to as a requirement for "super deficits." That is not scientifically sound.

The reasoning behind the inclusion of a requirement for significant limitations in the definition of ID was discussed in Mr. Carr's Petition for a Writ of Certiorari on pages 15 and 16. There is no need to repeat it here.

II. Irrelevant statements in the State's brief will not be addressed.

The first four-and-a-half pages of the "Statement of the Case" section of the State's brief, beginning on page 2, do not contain anything relevant to this case. The sole issue in the case is whether Mr. Carr has intellectual disability. Nothing on those pages has any bearing on this issue, and this reply brief will not address them.

III. The State's contention that *Hall v. Florida* does not apply is incorrect.

In its brief, the State argues that *Hall v. Florida* "does not apply" to Mr. Carr's case. Br. of Resp. at 19. It appears that the reasoning behind this contention is that Mississippi's *Atkins* jurisprudence does not include a "bright-line" IQ score cut-off of the kind that this Court declared unconstitutional in *Hall*. *See* Br. of Resp. at 18–20. The State writes, "As Mississippi's *Atkins* framework does not foreclose the presentment of evidence of adaptive functioning based on IQ scores of 70 or above, as was the case in *Hall*, the Mississippi Supreme Court's holding is entirely consistent with *Atkins*, *Hall*, and *Moore*. Br. of Resp. at 20.

To be clear, the operative principle that this Court emphasized in *Hall* and in the *Moore* cases is that the determination of ID must be "informed by the medical community's diagnostic framework." *Hall*, 572 U.S. at 721. That imperative applies to Mr. Carr's case just as it does to every other *Atkins* case. The courts must be guided by the science. And they must pay close attention to what the science actually says, even when it is somewhat nuanced.

IV. Conclusion

Contrary to the State's claim that "[t]he Mississippi Supreme Court's use of the term 'severe' did not alter or otherwise augment the generally accepted and uncontroversial diagnostic framework announced in *Atkins*, *Hall*[,] and *Moore*," Br. of Resp. at 14, it clearly did. "Severe" and "significant" are not synonyms. The court's instructions to the trial court on remand established an erroneous legal standard, one that runs afoul of this Court's holding that decisions in *Atkins* cases must be "informed by the medical community's diagnostic framework." *Hall*, 572 U.S. at 721. Mr. Carr prays that this honorable Court will grant the Petition for a Writ of Certiorari. Alternatively, this Court should summarily vacate the judgment below and remand for an analysis of Mr. Carr's *Atkins* claim.

Respectfully submitted,

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